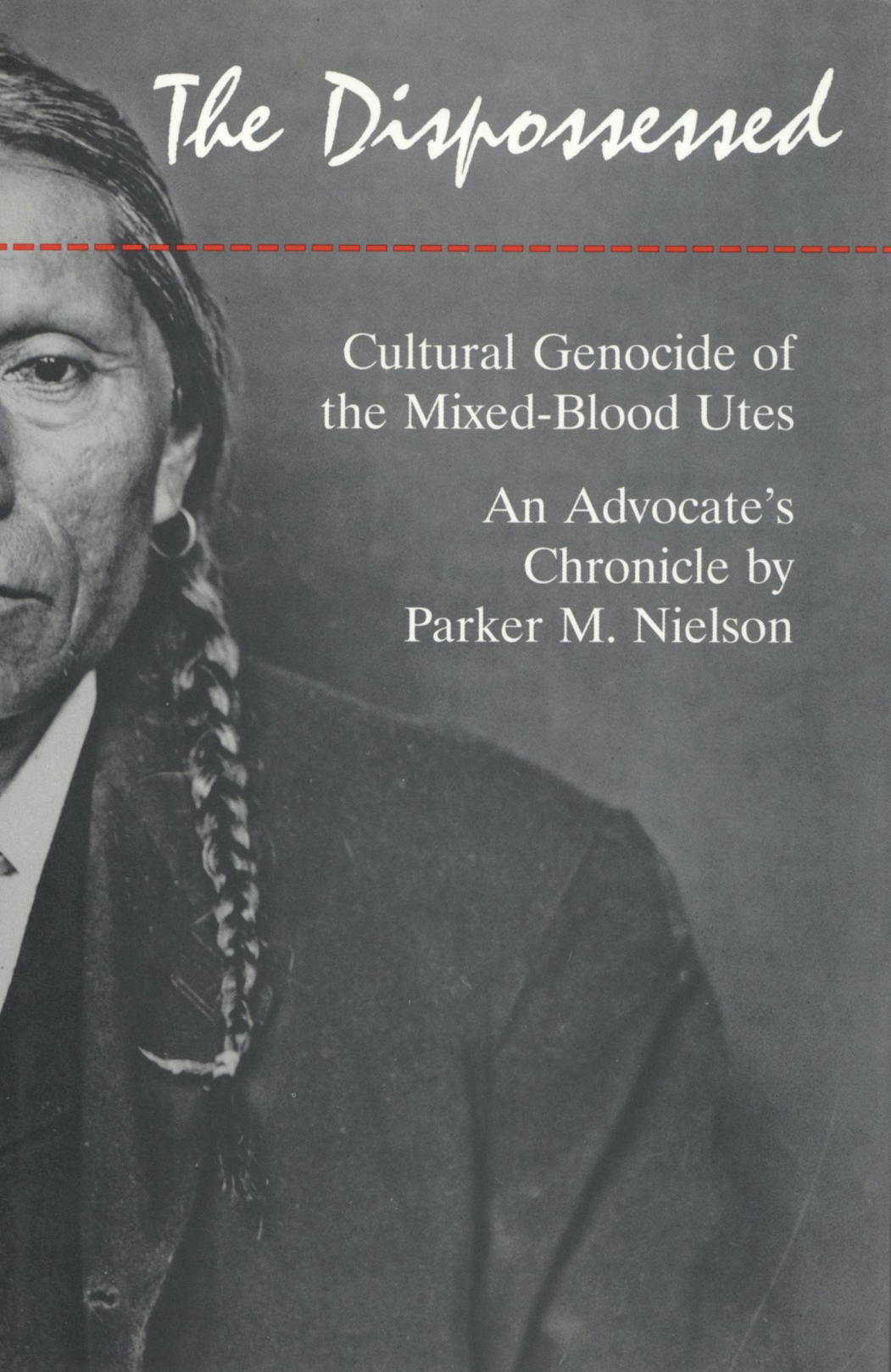
# The Dispossessed

## Cultural Genocide of the Mixed-Blood Utes

## An Advocate's Chronicle by Parker M. Nielson



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## CULTURAL GENOCIDE OF THE MIXED-BLOOD UTES

## AN ADVOCATE'S CHRONICLE

BY PARKER M. NIELSON

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# PREFACE

The story of the Northern Utes constitutes a tragic chapter in that portion of Indian history known as "termination." I became intimately involved with this story when I was employed to litigate the rights of the terminated, or "mixed-blood," Utes, in what was literally my first case as a private, solo attorney-at-law.

Congress directed that Northern Utes of mixed ancestry were less worthy of continued Indian status and declared by legislation that they would no longer be so classified. Full-blooded Utes were to be terminated at a later date, but Congress deemed them worthy of continued federal supervision while they prepared for non-Indian status. It was essentially an experiment by Indian administrators during the years of the Eisenhower administration, which assumed that quantum of blood was a measure of competence; that status as an Indian was a liability; and that if the status was eliminated, the Indian would be assimilated into the dominant population and the "Indian problem" eliminated. It seemed to this country lawyer that Congress had echoed British common law, which decreed that taking title to real property by descent rather than by testamentary devise was the "worthier title," by instituting its own policy of "worthier blood."

The events on which this work is based came to light after three Indian women complained to me about being cheated in the purchase of a used car. The car had been taken in trade for stock in an Indian corporation formed pursuant to the termination policy. Hundreds of Indians then came to me with papers and personal stories that revealed in detail—step by step—how they had been separated from their property, from their tribal way of life, and even from their identity as Indians. These documents and personal accounts made their

way to the U.S. Supreme Court in *Affiliated Ute Citizens v. United States* (1972), and are the foundation on which this work rests.

I tell this story of American justice and American Indians in a narrative style, with specific settings, characters, and events. Many scenes, drawn from documents and actual statements, are my re-creations, designed to portray events as they actually occurred. Quoted words of individuals are taken from letters, transcripts of testimony, minutes of meetings, and conversations that I recorded in my notes. Although many of the conversations and depositions may have occurred years after the fact, I have placed them in the chronological context of the events they describe. All quotations are accurate representations. The source and date of such material appear in the notes.

Though this work focuses on three bands of Indians in remote eastern Utah, termination ravaged virtually every American Indian tribe subjected to it. Many Indian groups were its victims in the decade following passage of House Concurrent Resolution 108 adopted on June 9, 1953, which marked the beginning of termination. Indians fear its revival with each new federal program. The government rhetoric of the "contract with America" of 1994–95 is a return to ideas advanced in 1953–54 and may presage a new round of the old mistakes.

It is not news that the American Indian has been victimized since 1492 by encroaching Euro-American society. What may be surprising is that the most tragic depredations on the American Indians, their property, and their way of life did not occur centuries ago. The most outrageous attacks occurred within living memory, immediately following World War II, and are still in progress. Those events, moreover, were and are more destructive of the unique values we romanticize under the label "Indian" than those of earlier eras, for they strike at the Indian way of life.

The history is accurate, but I make no attempt at dispassionate neutrality. I believe that it is important to view these events from the perspective of those who suffered.

If the reader gets the feeling that he or she has been, at least in some small way, a party to and responsible for these tragedies, albeit unwittingly, that perception is not inaccurate.

# THE DISPOSSESSED

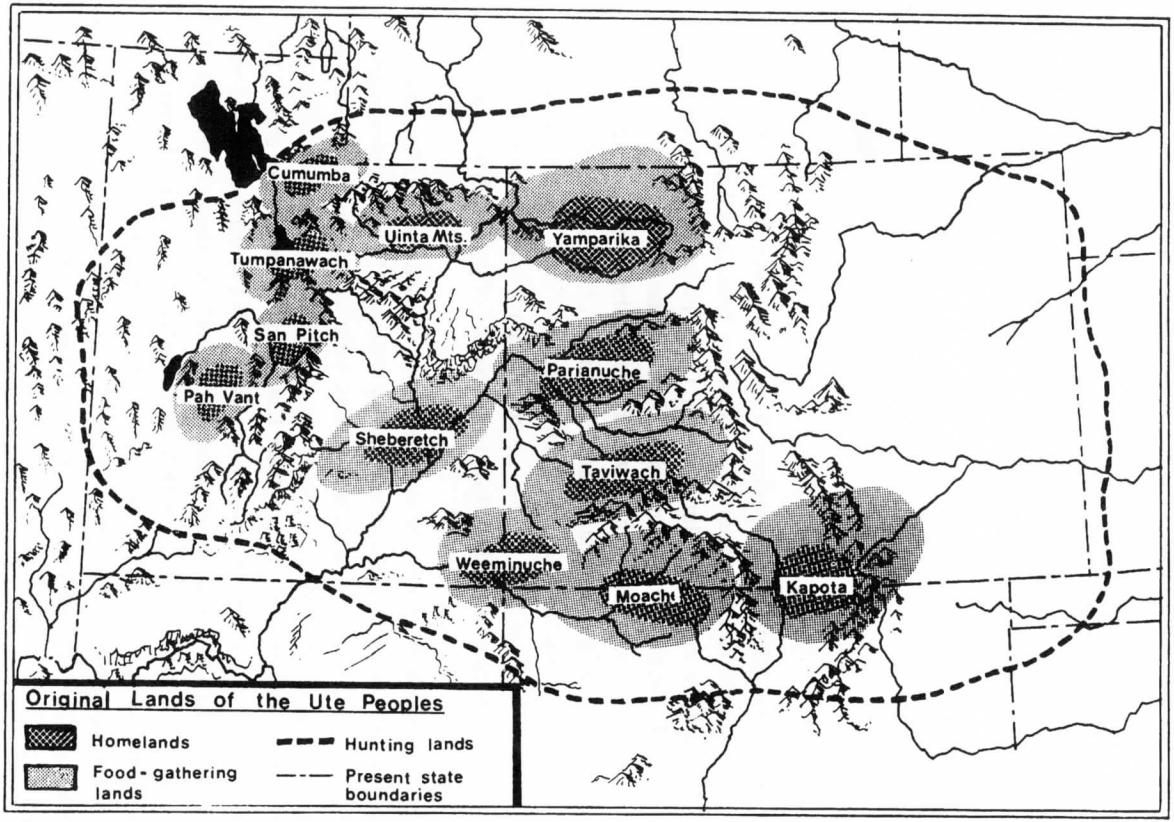
# INTRODUCTION

In the nineteenth century, and perhaps from time immemorial,[1] the broad midsection of America's Mountain West, extending from the western limits of the Great Basin to the eastern limits of the Great Plains, was the range of powerful bands and tribes of Indians called Utes or Yutas (N'uciu).[2]

The Utes were seasonal nomads who hunted, fished, and gathered edible plants. Long before the Spaniards came in search of the mythical cities of Quivera and Teguayo, the Utes were skilled traders. They bartered with the desert tribes to the west, with the Navajo and Pueblo Indians to the south, and with the Plains Indians as far distant as the panhandle of present-day Texas and Oklahoma.[3]

The Ute bands were loosely organized under "speakers" or "headmen," who led by virtue of the respect in which they were held.[4] Though each band's territory was well defined, territorial claims were nonexclusive. Land was viewed as a gift of creation, to be shared in common, and not as an object of private possession. Friendly neighboring bands were granted free access for hunting, travel, or other peaceful purposes. Change of Ute band affiliation was a casual affair in which Utes freely intermarried with or adopted members of other bands and tribes.[5] The Utes fiercely and effectively resisted invasion, however, replacing their normally loose interband organization with war confederacies under temporary chieftains until the threat was repulsed.[6]

When the Spanish missionary-explorers arrived in the eighteenth century, they found the Utes to be friendly, peaceable, "docile, gentle and affectionate,"[7] although, by twentieth-century Euro-American standards, they were also hard, even cruel.[8] From the Spanish, the Utes acquired the horse while neighboring tribes were still on foot.[9] Superior mobility increased the Utes' already




Reprinted, by permission, from O'Neil, Floyd, and Kathryn L. MacKay, *A History of the Uintah-Ouray Ute Lands* (Salt Lake City: University of Utah, 1977).

resourceful exploitation of their territory and extended their trading/raiding range thousands of miles, to Spanish settlements in California, Chihuahua, and Sonora.[10] The horse also made it possible for the Utes to hunt buffalo and other big game in competition with the powerful Plains Indians. Valiant in battle and already drawn into the slave trade by the Spaniards, they began trading Paiute and Navajo captives and even their own children, usually for horses, and exacted horses and guns from caravans moving up the Old Spanish Trail opened by the expedition of Fray Francisco Atanasìo Dominguez and Fray Francisco Silvestre Vélez de Escalante in 1776.[11]

Thus by the time of the Mormon occupation of the Great Basin in 1847 and the mining explorations in the Rockies beginning in 1858, the Utes' reputation as fearsome and respected warriors, hunters, and traders was well established. Their unique combination of qualities—their friendliness and courage, their mobility and intimate knowledge of the territory, and their facility in commerce—made the Utes preeminent in their mountain range and a favorite of explorers and soldiers when recruiting warriors, guides, and trackers.[12] The encroachment of trappers, pioneers, and prospectors, however, forced consolidation for dealing with the newcomers.

## TAMING THE IRON TWISTER'S PEOPLE

On the evening of July 10, 1847, Miles Goodyear, a mountain man whom the Indians called Mooritza (Red Deer), sat cross-legged with Brigham Young on the banks of the Seeds-kee-dee (Green River), near present-day Evanston, Wyoming. Goodyear, whose flaming red hair fell to his buckskin-clad shoulders, had been brought to the Mormon encampment by their advance scouts, who had spotted the smoke from his fire curling skyward on the headwaters of the Weber River.

Brigham Young knew of Goodyear's Fort Buenaventura, established on the banks of the Weber, site of present-day Ogden, Utah. Pamona, Goodyear's woman and the mother of his three children, was the daughter of an important Ute headman in the Great Basin, where the Mormons had already resolved to establish their "State of Deseret."[13] The scouts therefore knew their leader was anxious for a briefing by Goodyear on the difficult climate and farming conditions. Goodyear most certainly also told the Mormons about the great war chief, Wakara, then encamped with the Tumpanawach, or Uintah Utes, in the fertile Valley of the Timpanogo (Utah Lake) where Provo is now located.[14]

Wakara, known among the Spaniards as "the Napoleon of the Desert" and later among the Mormons as "Walker," preferred his own soubriquet, "the Iron

Twister" or "Hawk of the Mountains."[15] His wide-ranging exploits of commerce and depredation and his knowledge of topography had already made him legend. On one occasion he led his warriors and a stampede of more than five thousand horses, stolen from the Mexicans, through Cajon Pass amid a fusillade of musket shot. Wakara traded the horses to Jim "Old Gabe" Bridger, and many doubtless returned to the Pacific Coast as property of California immigrants.[16]

Although no record exists of Goodyear and Young's conversation, for more than a year Goodyear had been advising pioneers moving west that the Salt Lake Valley was something of a buffer between the hunting grounds of the Utes on the south and the Bannock and Snake Shoshone to the north. Settling there would be less likely to arouse either group. Goodyear was also anxious for a wagon road to be routed past his frontier outpost on the Weber, for then he could profit from travelers as Old Gabe had done at Fort Bridger.[17]

In any event, following the conference with Goodyear, Young instructed his advance scouts that rather than enter the more fertile Valley of the Timpanogo, "we had better keep further north towards the salt lake, [for it is] neutral ground, and by so doing we should be less likely to be disturbed and also have a chance to form an acquaintance with the Utes."[18]

Brigham Young's unannounced policy toward any Indians who would deny the territory the Mormons wanted for their state of Deseret was, in a word, extermination. He counseled his Latter-Day Saints that the only way to deal with Indians was with a display of strength. He acknowledged in 1853, "When we first entered Utah, we were prepared to meet all the Indians in these mountains, and kill every soul of them if we had been obliged to do so."[19] "It mattereth not whether they kill one another off or somebody else do it," he declared, "and as for our sending missionaries among them to convert them, it is of no use."[20]

However determined, the 143 settlers who initially entered Salt Lake Valley with Young could not have withstood an attack. It was therefore fortunate for them that Soweitte (Nearly Starved), headman of all the Uintahs, restrained Wakara while thousands of Mormons streamed into the territory.[21] Wakara was troubled by the memory of a dream he had had many years earlier, in which he saw the "Big Hats" (Spanish priests) returning. Dominguez and Escalante, like the Mormons, had talked of deity. In the 1770s they had promised Wakara's people that they would return to teach them of God. The Utes in turn had promised them homes in their territory. He wondered if these newcomers heralded the return of the long-awaited Big Hats.[22]

Wakara, yielding to pressure from Soweitte, went to Brigham Young on June 14, 1849, and offered the Mormons all of the land they wanted.[23] "The

waters are mine," Wakara warned, thinking of the fish in the Timpanogo, so numerous that the Utes could take them with bare hands.[24]

By then there may have been more Mormons than Wakara and his warriors could defeat in battle.[25] The Mormons had not moved on, as a friendly neighboring band was expected to do, but had "sat down" in the Timpanogo with their log lodges. Their main lodge, called Fort Utah and guarded by big guns that the Mormons called twelve pounders, was on the main camping grounds of the Utes, at the intersection of the principal hunting routes. It was keeping Wakara's people from the choice fishing waters.[26] The Mormons had chased away the game, and the fences they had erected to guard their cattle kept the Utes out. By autumn 1849, the Uintahs had been forced to take the Mormons' horses and cattle for food so that the women and children would not starve.[27]

In January 1850, a messenger arrived at Brigham Young's council house in Salt Lake City with a grim report. The Saints in Utah Valley had killed a Ute in an argument over whether the shirt he wore was stolen, stuffed his stomach with rocks, and thrown him in the Provo River. The Utes found the body, and the settlers feared the Indians would seek retribution. The Mormons in Utah Valley demanded protection.[28]

Brigham Young put his extermination policy into effect.[29] His Mormon militia was dispatched, with artillery support. Some seventy Indians were engaged in two days of heavy fighting near Fort Utah. Fortunately for the Mormons, measles had reached the Uintahs first, and the Utes were too weakened by the epidemic to offer effective resistance. Fortunately for the militia, Wakara's winter camp and his band of warriors were some seventy-five miles south in San Pete Valley.

The main body of Uintahs retreated south to the Spanish Fork River in the direction of Wakara's encampment. Their sick and wounded took refuge in a nearby canyon. With the Utes routed, the commander of the militia returned to Salt Lake City but left orders for his troops to pursue both groups and "take no hostile prisoners." "Let none escape," he directed, "but do the work up clean." Approximately forty Indians were killed and as many more surrendered to the pursuing Mormons who, as ordered, summarily slaughtered them.[30] Some were spared, principally women and children, on the condition that they "behave themselves." They were herded into an open stockade where, in the dead of winter, they were fed slop in troughs like beasts. The captive children were distributed among the Mormons, to be brought up in the habits of a Christian life, but escaped at their first opportunity.[31] The Mormons suffered one dead and several wounded.

Permanent Indian occupation of the Valley of the Timpanogo was ended. Over an allegedly stolen shirt, the Uintahs, who had welcomed their first Spanish visitors graciously and had held out the hand of friendship to the Mormons, were rudely expelled from the fertile valley that was central to their culture.[32] Hatred for the Mormons became intense. The Utes conducted periodic ambushes for more than a year thereafter, with loss of life on both sides.[33] Brigham Young finally recognized the folly of the extermination policy on July 10, 1851, and announced his often-quoted dictum, "It is better to feed the Indians than to fight them."[34]

The new policy did not, however, change Young's determination to take possession of every available watering hole and establish a "Mormon Corridor" of settlements from the Great Salt Lake to San Diego.[35] Such a chain would give Brigham's state of Deseret an outlet to the sea. The boundaries of Young's putative empire coincided precisely with Wakara's raiding and trading range. The Mormons then cut off the Ute slave trade, which had been a major source of Wakara's horses and guns.[36] In July 1853 they shot and killed a Ute and wounded two others while they were camped near Springville.[37] Wakara demanded that the killer be brought before him, which was refused, precipitating Walker's War, a futile guerrilla action waged on Mormon settlements along the Wasatch front in which fewer than twenty whites, but many more Utes, were killed.[38]

Wakara's warriors were hopelessly outnumbered and outgunned. Wakara finally "smoked a peace" with Young on Chicken Creek near Kanosh in May 1854. Before another year had passed, the Utes' greatest war chief rode out from his encampment to meet the Mormon leader's messengers, so weak that he had to be held upright in the saddle by two of his warriors, but too proud to meet Young's emissary unmounted.[39] He died before dawn the next day, January 28, 1855.

On September 2, 1856, a band of Ute warriors rode their horses into Salt Lake City again, fully armed and painted black, as if for battle. The Snake Shoshone, whose reputation in battle rivaled even the Utes,[40] met them on that day. The two groups formed separate lines at a point near the present grounds of the Mormon temple. The Snakes outnumbered the Utes two to one and were dancing the war dance. The anxious Mormons anticipated a fight between the two enemy bands, or worse, an attack on themselves, but the Shoshone had come to make a treaty with the Utes.

Arapeen, Wakara's brother, went to Ka-tat-o, leader of the Snakes, shook his hand, and raised him off the ground in a bear hug. Ka-tat-o lifted his peace pipe toward the heavens and cried out in a loud voice, "This is the weapon I come to fight with." The Indians were seated in a bowery. Arapeen led them in

raising their hands to the heavens twice and lowering them to the ground, as a sign of peace. The Utes then passed down the line of Snakes, measuring arms, shaking hands, and embracing one another. The pipe of peace was passed.[41]

The Ute resistance to Mormon encroachment had ended. Skirmishes with the Utes continued during the following decade, the most significant of which was the so-called Black Hawk War of 1863–67.[42] But the Uintahs were mostly left to steal or starve as their game was chased away and promised appropriations to relieve their destitution were withheld.[43]

The final drama for the Utes and their central Utah homeland played out over a three-day period beginning on June 6, 1865. Indian lodges were assembled on the shores of the Timpanogo, at the mouth of the Spanish Fork River, south of present-day Provo.[44] Leaders of all of the Utah bands were there, having been summoned to meet with the new Indian superintendent, O. H. Irish. He arrived accompanied by Young; but other "Federal and Military officers declined going because Brigham Young was invited" and "declared that rather than associate with Brigham Young on such an occasion they would have the negotiation fail."[45]

In a typical pattern of bribery, blankets were given to the Indians to win their confidence. Then Kanosh, leader of one of the Ute bands, introduced Soweitte: "Here is the father of all the Utes, Sow-e-ett. He used to be the great chief and father of us all, but now he is very old, poor and blind. He has no flesh on his bones, he is going down."[46]

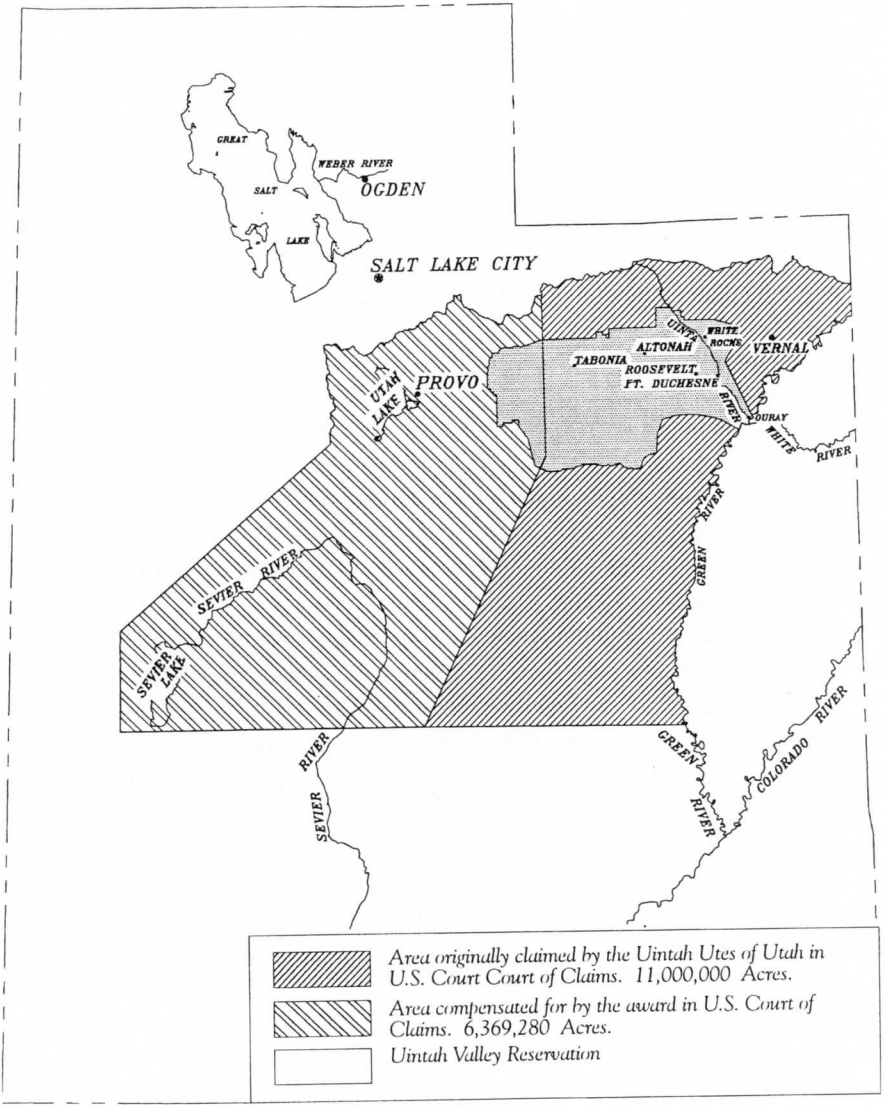
Indeed, by then the entire Ute Nation was as poor as Soweitte. Their hunting grounds had been plowed for farms, and Mormon fences kept the Indians from the fish in the streams. They were also "going down," and Irish announced that the council was to receive their formal cession of what little land was left and confine them to the Uintah Valley in northeastern Utah. Soweitte explained, "The people do not want to sell their land and go away. They want to live around the graves of their fathers."[47]

"If the talk is for us to trade the land in order to get the presents, I do not want any blankets or any clothing, if that is the way they are to be got," the Ute leader San Pitch declared. "I would rather do without than to give up my title to the land I occupy. We want to live here as formerly."[48]

Brigham Young, presuming to speak for the United States, then took control of the negotiations.[49] He explained the Utes' dilemma with ruthless candor: "If you do not sell your land to the Government, they will take it, whether you are willing to sell it or not. . . . And it won't make one particle of difference whether you say they may have the land or not, because we shall increase, and we shall occupy this valley and the next, and the next, and so on til' we occupy the whole of them."[50]

Wakara and Arapeen. Reprinted by permission of Utah State Historical Society. All rights reserved.

The Mormon prophet then lied. "The land does not belong to you, nor to me, nor to the Government," he urged, in an obvious play on the Utes' nonexploitive system of communal ownership. "It belongs to the Lord. And then, the treaty that Colonel Irish has here, gives you the privilege of coming back here to visit. You can fish, hunt, pick berries, dig roots and we can visit together."[51] The




Uintah Ute lands. Map by Dean Cardwell, Monsen Engineering, Inc.

events of the past were demonstration enough, however, that the Mormons would not allow the Utes to return or to gather food at their customary places.[52]

Young clearly recognized that the lands belonged to the Utes "as much as any soil ever belonged to any man on earth." He later acknowledged, "This is their home, and we have taken possession of it; and occupy the land where they used to hunt the rabbit, and, not a great while since, the buffalo, and the antelope were in these valleys in large herds when we first came here. . . . [T]hey could catch fish in great abundance in the lake . . . and live upon them pretty much through the summer. But now their game has gone and they are left to starve."[53]

When the Utes returned to their lodges at the end of that day in June 1865, they were angry, and unwilling to talk any more about giving up their land. The younger brother of Wakara, Tabby-to-Kwana (Child of the Sun), could see that there was no longer any hope. The game was gone and the Utes were destitute. "Peace" would clearly be imposed on Mormon terms. By then it was clear that the only remaining significant area where the Utes could live according to their own customs, unmolested by Mormons, was the Uintah Valley in northeastern Utah. Tabby therefore said, "I will go there. I love that country."[54] And all of the Uintah leaders except San Pitch finally signed the treaty.

There were no permanent Mormon settlements anywhere in the Uintah Valley, but prior to the Spanish Fork negotiations Brigham Young had been casting his acquisitive eye on the region. In August 1861 he had dispatched a party of surveyors, in anticipation of sending about two hundred of his Saints. On August 31, 1861, a group of prominent Mormons met at Young's schoolhouse in Salt Lake City and recruited volunteers to open a wagon road. On September 2 and again on September 11, notices appeared in the church-owned newspaper in Salt Lake City calling for volunteers to settle in the Uintah Basin.[55]

On October 3, 1861, President Abraham Lincoln preempted Brigham Young's plans by withdrawing the entire Uintah Valley, consisting of 2,487,474 acres, and declaring it an Indian reservation,[56] in part to prevent Young from taking the last remaining portion of the Ute range.[57] On May 5, 1864, the secretary of the interior was directed to sell all Indian lands in Utah Territory except Uintah Valley and locate the Indians there.[58]

Young thus knew whereof he spoke when he told the Utes that their consent made little, if any, difference. He failed to advise the Utes that there was little prospect that Congress would ratify the "treaty." The treaty system was falling into disfavor with Congress, and the policy of removing Indians to reservations was giving way to the notion of allotting them small tracts of land in severalty. Thus, in a classic triple act of perfidy, the United States neglected

Chief Tabby. Reprinted by permission of Utah State Historical Society. All rights reserved.

to pay the Utes as promised, to keep non-Indians out, or to ratify the treaty recognizing their rights.[59]

The Uintah Utes, under the leadership of the peaceable Tabby, left their central Utah homes and removed themselves to Uintah Valley in 1869. Many of them starved, or were frozen to death en route as they were forced to winter in Strawberry Valley, high in the mountains, in 1867, without the food and provisions they had been promised.[60]

## THE BETRAYAL OF OURAY

Meanwhile, gold had been discovered near present-day Denver in 1858. By 1861, thousands of prospectors had rushed to the area, searching for precious metals and encroaching on Ute hunting grounds in the Rocky Mountains.[61]

Governor John Evans of Colorado called for a meeting of all the Ute bands in Colorado to persuade them to relinquish their mineral-rich lands.[62] The meeting convened at the Conejos Agency in the San Luis Valley on October 1, 1863, but only the Uncompahgre (Tabeguache) Utes were there. The other bands either were not notified or refused to attend.[63] The government officials proceeded with the meeting anyway.[64]

Among the Uncompahgres' headmen were many who smoked the first peace with the "Mericats" in Santa Fe in 1846 and others who agreed to the first formal peace treaty with the United States at Abiquiu in 1849.[65] Now the older Utes found themselves unable to control the proceedings, for a young Uncompahgre named Ouray was the only one the government officials would talk to. Ouray and the Indian agent Lafayette Head spoke to one another in Spanish.[66] Head translated into English for government officials, and Ouray translated into Ute.

After the government officials passed out silver peace medals, they promised the Uncompahgres $10,000 per year in goods and another $10,000 per year in provisions, together with large herds of cattle and sheep, if they would agree to give up the lands on which gold had been discovered. Ouray and nine other Uncompahgres made their mark on the agreement,[67] though Ouray alone could understand the words on the paper. After the meeting of October 1, 1863, Ouray was recognized by the United States as "chief," not only of the Uncompahgres, but of *all* the Colorado Utes. Unlike Soweitte, who was "speaker" for the Utes in Utah Territory by designation of his people, Ouray was anointed by the government officials and may never have had that status among his own people.[68]

Ouray, barely thirty years old, was attending his first conference as a Ute leader. His father, an Apache, had been captured by the Utes and adopted into the Uncompahgre band of his mother. He spent his childhood herding sheep for the Mexicans in Taos, where he learned Spanish and English, joined the Methodist church, and returned at eighteen to the San Luis Valley where he distinguished himself as a hunter and a warrior.[69] These abilities, and his ruthlessness in dealing with rivals, assured his rise to prominence. The story of how the Mericats exploited and betrayed Ouray is the story of the demise of the Colorado Utes.

Major J. B. Thompson, newly appointed Indian agent for Colorado, arrived in the territory in 1866. Noting Ouray's intelligence and ambition and his conciliatory attitude toward Euro-Americans, Thompson cultivated the young Ute and taught him to sign his name.[70] Thompson took Ouray and the Utes' other headmen to Washington, D.C., in 1868 for negotiations to remove the Utes from the San Luis Valley and confine them to a reservation in the western third of Colorado. The delegation signed a new treaty to keep their lodges on the west slope of the Rockies. Government surveyors then claimed that the agency where the Utes got their provisions, established by the agreement of 1868, was outside the reservation by sixty miles.[71]

In 1872, more gold was discovered on the headwaters of the San Juan, near present-day Silverton, and Thompson's efforts were to bear rich fruits. The miners claimed that the mineral lands were worthless to the Utes, and Congress sent messengers to Los Pinos with more presents to persuade the Utes to give up the San Juan in the southern part of their reservation.[72]

The Utes, angry over the Mericats' broken promises, refused to talk.[73] As their speaker, Ouray used his knowledge of English to expose the violations of the government's pledge to keep the miners out and the injustice of the attempt to nullify formal treaties with the Utes, who had kept their part of the agreements.[74] The commission went back to Washington without an agreement.

The Honorable Felix Brunot, president of the Board of Indian Commissioners, was unwilling to accept the commission's failure. In 1872 Ouray was called to Washington, D.C., where he and the Utes' other headmen met with President Ulysses S. Grant. They were told that Brunot would meet with the Utes again the next year and went home with instructions to call a council of the Utes for another talk about the San Juan mines.[75]

On June 24, 1873, Ouray went alone to meet Brunot at a Cheyenne hotel to make a proposition. His only child, Friday, had been captured by the Sioux ten years earlier while the Utes were hunting on the headwaters of the Republican River in eastern Colorado. Now grown to manhood, Friday was reportedly living among the Southern Arapahoe.[76] Ouray desperately wanted his son to come home. "The Government is strong, and can do what it wants," Ouray declared. "If the Government will do what it can for me and get my boy, I will do what I can for the Government in regard to our lands."

"It matters not how much money it costs, or how much trouble it is," Brunot quickly agreed. "We will do all we can to get him. How soon do you want to have a council about your lands?"

"I want to see the boy," Ouray replied, and then made clear that he understood the bargain. "The Utes understand you now. I will tell them what you say, and they will know you are our friend."[77]

Brunot's fateful five-day council began on September 6, 1873. Brunot reported, "Ouray was greatly disappointed at the failure to bring his son Friday with us."[78]

At each session Brunot prayed aloud, and the notoriously superstitious Utes were moved by his appeal to deity. "You talk in the name of the Great Spirit," Ouray said. "We understand that, and think it right and ought to have great weight."[79]

Brunot lied to the assembled Utes about the specific instructions he had been given to acquire their lands: "It makes no difference to me about these mountains. I do not want anything that is in them. It is not for me or any white friend of mine that I am talking to you about this matter. It is because I know that it is good for the Utes. I asked the President to make an order to drive the miners out." He then made clear allusion to his clandestine meeting with Ouray: "The President heard Ouray had changed his mind and would sell the mines, so it was thought best to stop the execution of the order for a while."[80]

After a two-day council with his fellow Utes, Ouray announced, "The mountains with mines we will sell, but those where the mines are not in we will not sell."

"We must understand each other better or our talk will be for nothing," Brunot warned Ouray, in a nineteenth-century form of double-speak. "I could not make an agreement for a little piece of country where the miners only are now. It would take all of the Utes and one thousand soldiers to stand around it to see that the miners did not go to the other mountains."

"Why cannot you stop them; is not the Government strong enough to keep its agreements with us?" Ouray responded. He tried to get the agreement he had promised Brunot. After pleading with his fellows for another two days, a frustrated Ouray was obliged to report, "The majority are opposed to it. I am in favor of it, but it does not amount to anything."[81]

Abruptly, and boding ill for Ouray's hopes to be reunited with Friday, Brunot adjourned the meeting with an announcement that he would return to Washington. Ouray had delivered his part of the bargain, but he was unable to persuade his people. He found himself trapped by his own duplicity. He must deliver the Utes' consent to Brunot in some form, or lose his chance for Friday's return.

Brunot obviously knew his man and remained at Los Pinos for three more days, preparing formal articles reciting the agreement the Utes had refused.

Chief Ouray. Reprinted by permission of Utah State Historical Society. All rights reserved.

Ouray finally brought the headmen to Brunot on September 13, 1873, and announced that they would agree to the articles—but only on the condition that the land "prove to be mining and not farming land." If any of it were farming land, "then the agreement should be inoperative." The Utes were also promised, as their brothers in Utah had been, that they could continue to hunt on their original range.[82] The document, known in infamy as the "Brunot Cession,"

ended the Utes' occupation of 3,450,000 acres in southern Colorado. Ouray's letter at the conclusion of the conference shows that, even then, the Utes agreed to surrender existing mines only.

*Los Pinos Agency*
*September 13, 1873*

*Mr. Brunot:*

*Dear Sir: You have been to see us, and we have had a good time. We want you should tell Governor Ebbert and the people in the Territory that we are well pleased and perfectly satisfied with everything that has been done. Perhaps some of the people will not like it because we did not wish to sell some of our valleys and farming land. We think we had good reasons for not doing so. We expect to occupy it ourselves before long for farming and stock raising. About eighty of our tribe are raising corn and wheat now, and we know not how soon we shall all have to depend on ourselves for bread. We do not want to sell our valley and farming land for another reason. We know if we should the whites would go on it right off, build their cabins, drive in their stock, which would of course stray on our lands, and then the whites themselves would crowd upon us till there would be trouble.*

*We have many friends among the people in this territory and want to live in peace, and on good terms with them, and we feel it would be better for all parties for a mountain range to be between us. We are perfectly willing to sell our mountain land, and hope the miners will find heaps of gold and silver; and we have no wish to molest them or make them any trouble. We do not want they should be down into our valleys however, and kill or scare away our game.*

*We expect there will be much talk among the people and in the papers about what we have done, and we hope you will let the people know how we feel about it.*

*Truly your friend,*
*Ouray*[83]

Though the Utes never agreed in any meaningful sense that they could do so, non-Indians took up the valleys of southern Colorado. For cooperating with Brunot, Ouray received $1,000 per year for the rest of his life. Brunot also arranged for the promised meeting with Friday at his office, but the young man refused to recognize Ouray as his father, became ill in Washington, and died after he returned to the Arapahoes two weeks later. Ouray was never reunited with his son.[84]

After the Brunot Cession, Ouray took up Anglo ways as an example to his people. He and his wife, Chipeta, moved into an adobe house built for them by the government near present-day Montrose and filled it with furnishings, china, a silver tea service, and curtains on the windows. The finest Anglo clothes, including silk hats and tailored shirts and suits, were acquired for him from Washington clothiers, at government expense. Ouray became a farmer.[85]

Other leaders of the Ute bands resented Ouray. They charged that he had sold out for the luxury of his home and his $1,000-per-year salary. A warrior named Hot Stuff was sent to kill Ouray, but Chipeta warned him and he shot Hot Stuff through the neck. Chipeta's own brother attacked Ouray with an ax, but the agile Ouray avoided the blow and survived a hand-to-hand fight. Ouray killed at least four others when they opposed his policies.[86]

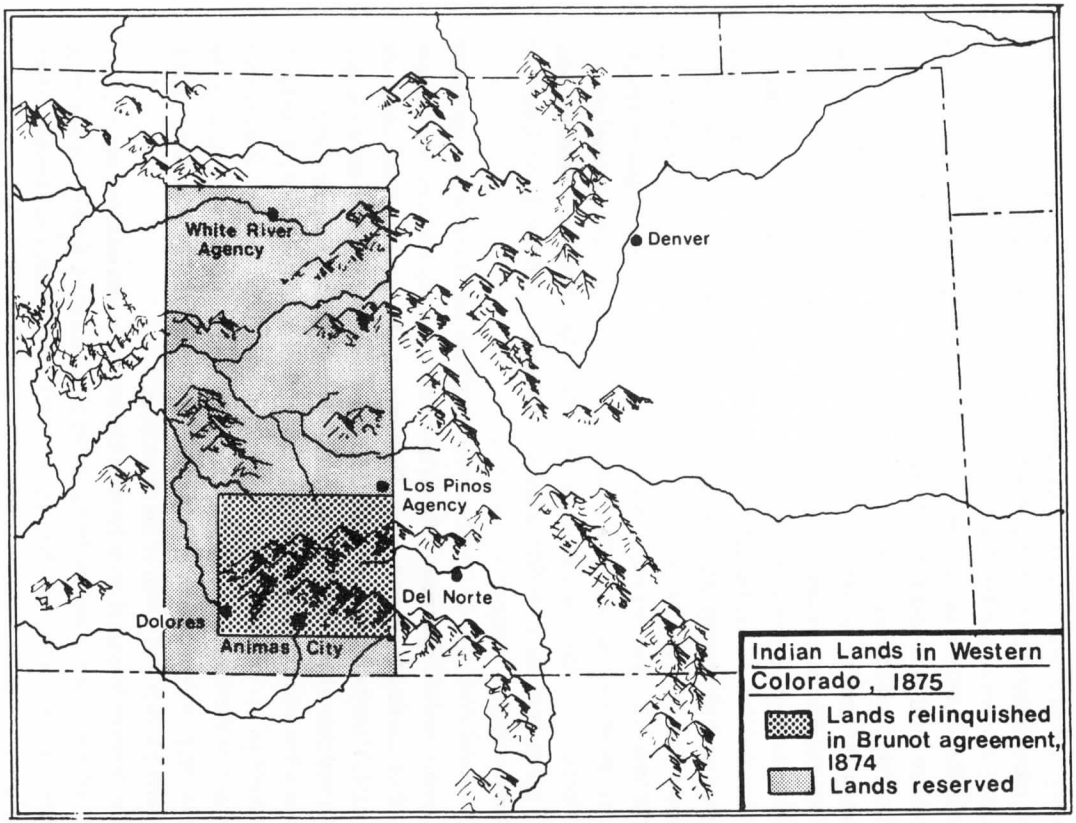
Before many years had passed, there were more conflicts over the valley lands that the Utes still regarded as their own and that the Brunot Cession had preserved as their hunting grounds. Moreover, the residents of Colorado, under the leadership of Governor Frederick Pitkin, mounted a shrill campaign to discredit the Utes and get them out of the mining country altogether, falsely accusing about one hundred Utes from the White River Agency, near what is now Meeker, Colorado, of starting a forest fire while hunting.[87] Then the new Indian agent, Nathaniel Meeker, plowed a meadow the White River Utes had used for racing their ponies.[88]

On September 21, 1879, about two hundred cavalrymen and mounted infantrymen were dispatched to the White River Agency to arrest the Indians accused of starting the forest fire.[89] They were under the command of Major Thomas T. Thornburg, who, with cavalry and a howitzer mounted on a railroad flat car, had chased the Cheyenne over Kansas and Nebraska a year earlier.[90]

The Utes ambushed Thornburg at Milk Creek on September 29, 1879. A detachment of six hundred black cavalrymen arrived on October 2 to relieve Thornburg at the Battle of Milk River. Ouray rushed his representative to the scene to help restore peace. Thornburg and thirteen of his men were killed, along with Meeker and seven of his employees.[91]

The Meeker Massacre, as it became known, fueled pressures to get the Utes out of Colorado. Ouray and the headmen of the Colorado Utes were again taken to Washington, plied with alcohol, and treated to prostitutes. On March 6, 1880, they reluctantly "acknowledged" an agreement relinquishing the remainder of their lands in the mineral-rich Rocky Mountains.[92]

The agreement provided that it would be invalid unless a majority of the Utes signed, however, and most of them were bitterly opposed to its terms. The

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Uncompahgre agent at Los Pinos, Otto Mears, simply paid the illiterate Uncompahgres $2 each to make their mark on the document they could not read. Mears was charged with bribery by George W. Manypenny, the former commissioner of Indian affairs from Ohio and chairman of the 1880 Ute Commission, but Secretary of Interior Samuel J. Kirkwood brushed the charges aside. "Send me a bill for it," Kirkwood said, "and I will see to it that the government reimburses you. You did a good job and I am grateful." At the White River Agency, despite bribery and intimidation, only 61 males among the 665 Utes were induced to agree, but the commission declared them a majority.[93]

Under the terms of what was known as the "removal agreement," the Uncompahgres were to settle on a reservation to be established for them on the Grand (Colorado) River near the mouth of the Gunnison, and the White River Utes were to move to the Uintah Valley Reservation in Utah Territory.[94] When the Uncompahgre commission, headed by Mears, viewed the proposed site at the junction of the Gunnison and Colorado rivers, they concluded that the land was too good for mere Indians. Determined to save the area where Grand Junction is now located, they reported that sufficient agricultural land could not be located. The Uncompahgres should be moved to the lower reaches of the White River in Utah, they suggested, contiguous to the Uintah Valley[95]—an area so desolate that farming unthinkable.

Heartbroken Colorado Utes contrived every possible excuse to delay. Finally, Otto Mears and Judge T. A. McMorris of Colorado, the only two commissioners in the area, signed the order for removal and the Utes were informed that they must be ready to start for their new reservation in two hours. General R. S. Mackenzie, commander of the Fourth U.S. Cavalry, surrounded them with artillery mounted on the hills overlooking their camp and refused their request for time to confer with their elders. The next day humiliated warriors, weeping women, and wailing children were forced to abandon blankets and personal possessions in a frantic flight from their Colorado homes while the settlers who remained appropriated their meager possessions.[96] Colorow's band was the last to leave Colorado, on September 1, 1881. They arrived at the new Ouray Reservation on September 13, 1881.[97]

The Uncompahgre Utes had never waged war with the United States. Ouray had always been the Mericats' friend, even at the expense of his reputation among his own people, and had interceded to keep the peace. Ouray now put aside the Anglo's clothing and donned the Ute breechclout and buckskin. A sick and broken man, Ouray returned to his people and died in a Ute lodge in August 1880.[98]

## THE UINTAH VALLEY

During Indian summer 1886, three companies of the U.S. Army's Twenty-first Infantry struggled through the brush-choked ravines of Taylor Mountain, sending a great cloud of dust skyward as they made their way into the Ashley Valley of northeastern Utah. The huge covered baggage wagons bumped over logs forming the bed of a "corduroy road," then lurched through washouts so deep they had to be held upright with ropes. Astride the wheel mule of each team, hitched six to a wagon, sat a black soldier, guiding the lead animals with a jerk line.

The settlement at Vernal, founded by non-Mormon ranchers two years earlier, took on a carnival atmosphere at the approach of the army. Farmers abandoned labor in their fields to marvel at the beautiful fat cavalry horses and huge mules. When the soldiers made camp on a farm near town, housewives and curious children came by the wagonload to watch the black soldiers singing as they fed their animals for the night.[99]

The troops, under the command of Brigadier General George Crook, were from Fort Bridger. They had been sent to protect the settlers in Vernal, who feared an Indian uprising in the Uintah Valley, twenty miles to the west. Rumors of Indian unrest had foundation in fact. The Uintahs had been betrayed in 1865 and, under their war chief, Black Hawk (An Tonga), they had conducted desperate raids on Mormon farms between 1865 and 1867 to gather food.[100]

Black Hawk had been defeated in 1867, and the Uintahs' sense of betrayal increased as the White River Utes were moved onto their land without their consent.[101] Mormon ranchers herded their cattle and sheep on the reservation, disregarding the Uintahs' rights.[102]

The Uncompahgre Utes, located on arid lands at the mouth of the White River, contiguous to the Uintah Valley and twenty miles to the south of Vernal, were also in a state of unrest. They found it impossible to farm the desolate area they had been consigned to and, to avoid starvation, began sending hunting parties to their former lands in Colorado.[103] This right had been promised them in the 1880 removal agreement, but whites in Colorado circulated rumors of Indian depredations in an effort to keep them out altogether.[104]

The non-Indians deliberately tried to provoke the Utes into an uprising by telling all three bands that Crook's army was coming to kill their leaders and take their land. If the Utes attacked, the troublemakers believed that the Utes would be moved elsewhere and they would be able to acquire the Indian land for themselves.[105]

Ute Indian and his dog, 1873. Reprinted by permission of Utah State Historical Society. All rights reserved.

After the Meeker Massacre, the Little Big Horn, the Black Hawk War, and Walker's War, the settlers' fears seemed to be justified. The Utes in Uintah Valley even warned them to "fort up" and protect themselves.[106]

On August 19, 1886, the soldiers broke camp and marched on into Indian country. Because of the rumors, they feared an ambush and went by way of the "twists," a ragged maze of washes, rather than along the main road. They

Ute Indian girl on her horse, 1873. Reprinted by permission of Utah State Historical Society. All rights reserved.

camped at Fort Thornburg, which had been established in 1881 near the Uncompahgre Reservation at the mouth of the White River, abandoned in 1884, and then burned. Crook had been instructed to establish a new fort on the banks of the Duchesne River midway between the Uncompahgre and Uintah agencies, where it could control the Indians of both reservations.[107] So the army

marched on into the Uintah Valley, where it was joined by Major William Benteen's black troopers of the Ninth Cavalry from Fort Washakie, Wyoming.

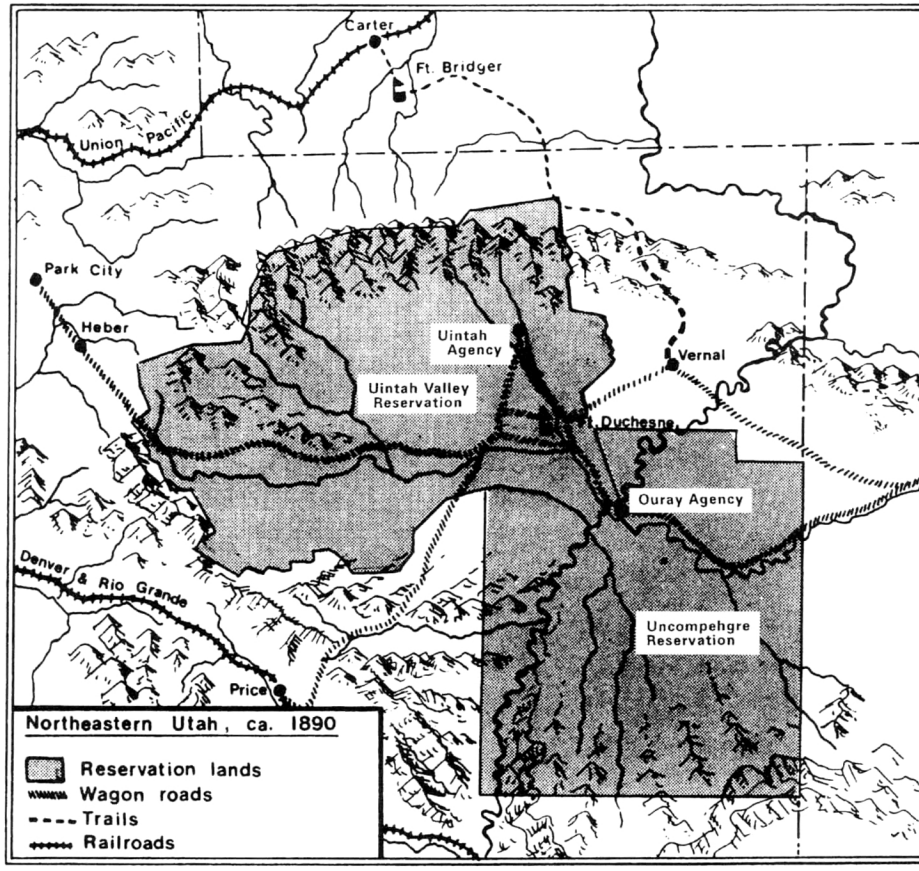
The Utes were terrified. Crook had defeated the Sioux and pursued a mere 80 fearless Cheyenne warriors with an army of more than 12,000 (including the late Major Thornburg) until he finally slaughtered them.[108] The three bands of Utes assembled a force of 700 men, sent their women and children into hiding, and prepared to fight.[109]

Several days later, a hard-riding Ute scout intercepted the carriage of the Indian agent Eugene E. White as he approached his office at Whiterocks. White was returning from a conference where he had convinced the Ute leaders that they should remain peaceful and bring their families back from hiding. The soldiers were no threat as long as the Utes "behaved themselves," he assured them, and resistance would only mean more soldiers and the eventual loss of more Indian land.

"Buffalo soldiers! Buffalo soldiers! Coming! Maybe so tomorrow!" the terrified scout blurted to White. "Indians say them at burnt fort yesterday, coming this way." The Indian ran to the carriage, seized White's coat and rubbed its black sleeve over his hand, face, and head. "All over black! All over black! Buffalo soldiers! Wooly head! Wooly head! All same as buffalo."[110]

The agent had neglected to explain that the approaching troops were "buffalo soldiers." The Colorado Utes had fearful memories of the hard-fighting black cavalry who had relieved Major Thornburg at the Battle of Milk River. After another round of persuasive talks, the Utes finally agreed to allow the "buffalo soldiers" to "sit down" (camp) in the Uintah Valley. Crook's adjutant led his men to the banks of the Uintah River some seven miles from their intended destination, where Crook planted his flag and declared, "This is the future Fort Duchesne."[111]

With buffalo soldiers to ensure that the Utes behaved themselves, the rumored encroachment on Ute land became reality. It became apparent that Otto Mears's choice for the Uncompahgre reservation contained no agricultural lands, and government officials moved the Uncompahgres to the Uintah Valley in 1897.[112] Gilsonite discoveries in the Uintah Valley, like the gold discovered in Colorado, led to more demands by prospectors. In 1888, the Indian agent justified the relinquishment of 7,000 acres of mineral lands in the Gilsonite Strip, a triangular area on the northeast border of the valley, following the familiar reasoning that they "are not, nor have they been, used or occupied by the Indians." "They are not fit for agricultural or grazing purposes," the agent assured Congress—as if these traditionally nomadic hunters, whose history demonstrated their horsemanship and facility for commerce, were suddenly

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suited for an agrarian life. Major Benteen's troops, moreover, needed the brothels an Anglo community located nearby predictably supplied.[113]

Non-Indians continued to trespass on the Uintah Valley Reservation. Prospectors discovered more mineral deposits, and each time they did there were pressures to have Congress redefine the reservation boundaries to exclude the mines from Indian ownership. The Mormons continued to herd their cattle and sheep in Strawberry Valley, on the western border of the reservation, ignoring the Ute's objections "that their grass was getting short and the pasturage ruined (and) what little cattle they had was being stolen, or lost, or strayed among the Mormon cattle."[114]

## THE ALLOTMENT PERIOD

In 1887 well-meaning lawmakers led by Senator Henry L. Dawes of Massachusetts, the reputed friend of the Indian in that era, decided that the Indian should be "assimilated" and converted into a yeoman farmer, in the mold of the non-Indian settlers then encroaching on Indian country. They adopted the "allotment" policy, in which each Indian was given a tract of land and his Indian status was declared ended.[115] The policy lasted until the New Deal of President Franklin Delano Roosevelt in 1932. Many Indian communities were destroyed in the process, notably the Five Civilized Tribes in Oklahoma.[116]

A precursor to the allotment policy was the provisions of the 1880 removal agreement which stipulated that the Uncompahgres were to be given lands in severalty. By the time Utah became a state in 1896, this policy was at the zenith of its popularity among Indian administrators.

By 1902, Utah's congressional delegation had secured the adoption of an act directing the restoration of all unallotted and unsold Indian land on the Uintah Reservation to the public domain.[117] The Indian Appropriations Act of 1902, the Joint Resolution of June 19, 1902, and the Indian Appropriations Act of March 3, 1903, each directed the secretary of interior to send an inspector to obtain the consent of the Uintah and White River Utes to allotments.[118] The Joint Resolution also directed that common grazing lands be set apart "as will subserve the reasonable requirements of said Indians for the grazing of live stock."[119] James McLaughlin, an Indian inspector who had won a reputation as an Indian negotiator when he duped the once-proud Sioux into confinement after they were crushed by General Crook, was sent to meet with the Uintahs and White Rivers in the spring of 1903, pursuant to instructions by the acting commissioner of Indian affairs, to persuade them that they should accept the allotment of lands and consent to the opening of those that remained to homesteading.

The Utes had already rejected efforts by presidential commissions in 1894 and 1898 to negotiate an agreement for the relinquishment or cession of unallotted lands.[120] But McLaughlin was fortified in his new negotiations by the U.S. Supreme Court ruling in the 1903 case of *Lone Wolf v. Hitchcock*[121] giving Congress plenary (i.e., unqualified) authority over Indians and their property, including the power to abrogate treaty obligations.

The allotment policy ended the reservation system and the often-ignored policy of protecting Indian lands against more aggressive Euro-Americans. The *Lone Wolf* decision validated the argument that the Uintahs had no right to the

Ute delegation, March 1905. Courtesy Smithsonian Institution, National Anthropological Archives.

reservation because the Treaty of Spanish Fork was never ratified and the 1880 removal agreement gave no rights in the land to the Colorado Utes.[122] Those legal developments combined, magnifying one another in ways that doomed the Utes to the loss of more land and assuring McLaughlin that the Uintah Valley would be opened to settlement—with or without the Utes' consent.

"I bring to you a message from Washington and am speaking to you now as a friend," McLaughlin assured the Uintahs and White Rivers, as if reading from the minutes of the Brunot Cession or the Treaty of Spanish Fork.[123]

> A recent decision of the Supreme Court of the United States is that Indians have no right to any part of their reservation except what they may require for allotments in severalty or can make proper use of.
>
> You say that [the reservation boundary] line is very heavy and that the reservation is nailed down upon the border. That is very true as applying to the past many years and up to now, but Congress has

> provided legislation which will pull up the nails which hold down that line and after next year there will be no outside boundary line to this reservation.[124]

McLaughlin acknowledged that the Indian Office was "very anxious that you consent to the provisions of this Act," but lied when he told the Utes that the reason for anxiety was "so that you may get the best of your reservation lands for yourself."[125]

The Utes already had an example of the allotment policy in operation in the 1880 removal agreement. The U.S. government had simply moved the Uncompahgres to the Uintah Valley and allotted them land there, without the Uintahs' consent. Then, on the assumption that the only obligation to the Uncompahgres under the removal agreement was to find them "homes," Congress returned the entire 1,933,000 acres of the Uncompahgre Reservation to the public domain on June 7, 1897, without any compensation to the Utes.[126] The Utes therefore knew that allotments meant, in practice, that they would be separated from their lands and left destitute.

"You are my friend?" Appah, a Ute leader, challenged. "What have you been telling these Indians? I do not like that. When the Indians were given this land, Washington promised it would be ours always and not opened. They tell us that when they pulled the chain over and surveyed it."

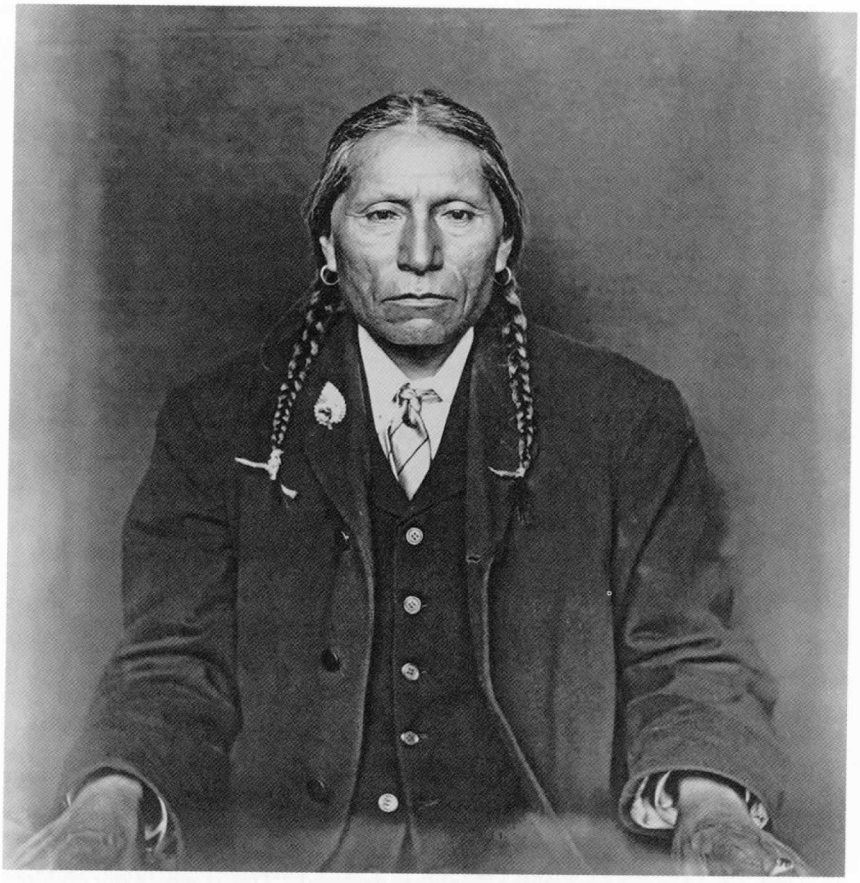
The Uintah and White River leaders agreed in a chorus of dissent.

"I don't want to talk, I don't want you to talk to us about opening our reservation," one of them declared. "I want to keep white people off the reservation. This is Indian land."

"This land is not for nothing," another declared. "This is where our children were born and raised. We do not want this reservation thrown open."[127]

"After the white people come in here they will say, 'we took your land, now we will take your water and your house. So you get off this land; go to some other country and find some other place!'" Happy Jack, a White River leader, complained. "This is the reason we feel bad over this business. The land where the white man's towns are belonged to us at one time. These Indians do not understand what you mean. You are just like a storm from the mountains when the flood is coming down the stream, and we can't get help or stop it."[128]

"Our records are loaded down with all that has been said by you people and by me in regard to this matter," McLaughlin replied to the protests of all the leaders. "I talk to you very plainly trying to explain the Act of Congress. Your talk has been simply along one line, and that is protesting against the opening of your reservation." After six days of persistent protests by all the



Appah. Courtesy Smithsonian Institution, National Anthropological Archives.

respected elders of the Utes, McLaughlin finally admitted what had been true all along. "My friends, you seem not to have grasped the thought that what you have been discussing is already past, and all your talk on that line amounts to nothing. You are on record as having opposed it. The reservation will be opened notwithstanding your protests."[129]

And so, as McLaughlin called for their consent, the luckless Utes stood mute, registering their protest in the traditional way, by silence.[130] McLaughlin reported that the Ute Indians were "unanimously opposed to the opening of their reservation."[131]

The Uintahs and White Rivers refused to choose 40-acre tracts for themselves or 80-acre tracts for their families. In 1905 a commission was assigned to select allotments for them. A total of 103,265 acres of the least valuable lands in the Uintah Valley were allotted by the commission, together with a common grazing reserve of approximately 250,000 acres in the Strawberry Valley and along the Whiterocks River and other common resource lands. The remainder was designated for homesteading by non-Indians.[132] The Mormons then met on July 14, 1905, in Provo and held a drawing for the best lands in the Uintah Valley.

A presidential proclamation of August 14, 1905, took 101,000 acres from the Uintah Valley Reservation and added it to the Uintah National Forest. Another 60,160 acres were set aside for reclamation and reservoir purposes. Still another 2,140 acres were entered as mining claims, following the familiar reasoning that mineral lands were of no use to the Utes.[133]

A land rush followed the opening of 1,004,225 acres in the reservation on August 28, 1905. Homesteaders' wagons rumbled through the Strawberry Valley. Saints made their way into the valley of the Duchesne, where the peace-loving Old Tabby had established his lodge, trusting Brigham Young's promise that the Uintah Valley would be preserved for the Uintahs forever. The Mormons founded Tabiona, and named the nearby mountain Tabby Mountain.

In May 1906, less than a year after the Uintah Valley had been thrown open to homesteaders, the anguished Utes had been pushed to the brink of open rebellion. Appah, a White River leader, was camped on the Dry Fork tributary to the Uintah River with hundreds of men, women, and children. They were well armed, and had assembled 1,000 horses and 50 head of cattle and loaded their personal belongings into wagons.[134]

The White River Utes were so disheartened and confused that they resolved to follow Appah and their chief, Red Cap, on a thousand-mile flight to South Dakota where they hoped to form a fighting league with the Sioux, Crow, and other northern Plains Indians. Red Cap also believed they could find land on the Pine Ridge Reservation for their traditional way of life.[135]

Many of the young men in the camp shaved their heads at the Bear Dance in the spring, as an indication that they would fight, if necessary. They made it clear, however, that they intended to go to South Dakota in peace, if allowed to do so.

In October 1906, the Tenth Cavalry intercepted the migrating Utes outside of Casper, Wyoming. The soldiers told Appah and his party that the president had ordered them to return to their allotments. James McLaughlin had already met with Red Cap and persuaded some in his party to do so. The governor of

Chief Red Cap and family. Courtesy Smithsonian Institution, National Anthropological Archives.

Wyoming reported that the Utes were guilty of depredations, which prompted the order.

Appah knew there had been no depredations. The agent from Whiterocks had followed the Utes and observed that they had injured neither the residents nor their property. They had taken only wild game for food, which was their right under the 1880 removal agreement. Appah and his followers refused to go back to the Uintah Valley, but the troops converged on them, took them into custody, and escorted them to Fort Meade in South Dakota.

The Utes thus reached Pine Ridge, but under military escort. They found that the Sioux had been crushed in 1890 at Wounded Knee, were facing hard times themselves, and had no hunting grounds to share. The hoped-for alliance was impossible. Disheartened, the Utes returned to Utah in 1908.[136]

Back in the Uintah Valley, there was little for the buffalo soldiers to do among the peaceable Utes but deposit "spent soldiers" in the ravine near Fort Duchesne, giving it its name, Bottle Hollow. The troopers built a wagon road to the nearest railroad junction at Price, performed at ceremonial occasions in neighboring communities, and planted trees that still dominate the landscape at

Fort Duchesne. In 1910 the garrison was sent to fight in the Spanish-American War. In 1912 the abandoned fort became the headquarters for the Indian agency.[137]

The Utes Appah and Red Cap left behind fared no better than those in their abortive exodus. The homesteaders streaming onto the reservation lands found them suitable for grazing and pressured the Indians to give up their allotted lands. Individual 40- or 80-acre tracts were too small to be put to economic use, the newcomers urged. As the allottees died and the lands were divided among their heirs in ever-smaller parcels, the Utes became increasingly vulnerable to these pressures.[138]

Many of the Utes chose allotments suitable only as range for their horses, which were the symbol of native wealth and prestige. Despite that cultural resistance, adult Ute males owning cultivated fields increased from 66 percent in 1912 to 79 percent in 1920, but their farms averaged only 41 acres and were actually worked by agency employees or white tenants. According to David Rich Lewis, "Northern Ute landholdings fell from nearly four million acres in the 1880s to 360,000 acres in 1905, a 91 percent reduction. By 1934, 26 percent of all allotments had been alienated, 64 percent were tied up in heirship status, and nearly 22,000 irrigated acres were leased to whites."[139] When the allotment process was ended by the Indian Reorganization Act of 1934, most of the 103,265 acres in 1,283 individual allotments had been sold to non-Indians. In the end, all but 127 acres of the land originally allotted to the Utes passed into non-Indian ownership.[140]

The assumption of the allotment policy, that some magic in individual property ownership would prove an educational, civilizing factor,[141] had proven an illusion. The policy destroyed the Ute economy, which was based on communal resources, as it did every other Indian group in the country subjected to the policy. The removal of the government's control over Indian land as trustee led to an "orgy of exploitation" never equaled in the United States.[142] The once-proud Five Civilized Tribes of Oklahoma, which had been a sterling example of the acculturation of a native people, were reduced to penury. The United States was subjected to international disgrace.[143] Not many years passed before it was reported to Congress, "Unfortunately this policy has for the most part operated in the opposite direction" from that envisioned by its advocates.[144]

The combined Uintah Valley and Ouray reservations originally consisted of 4,420,474 acres—land essential to the Indian way of life. By 1909, only 353,265 acres remained in individual or common Ute ownership.[145]

After World War I, American Indians were no longer outsiders in American society, at least not legally. They had been recognized as citizens of the United states in 1924.[146]

## THE REORGANIZATION ERA

Winters were always harsh in the Uintah Valley, possibly because of its average elevation of 6,800 feet. But the winter of 1936–37 must have seemed less oppressive to John Pawwinnee, Jim Atwine, and Lawrence Appah because of the promises held out by Robert L. Bennett, former superintendent at Fort Duchesne and program officer for the Bureau of Indian Affairs (BIA), at the meeting just concluded.

Pawwinnee, Atwine, and Appah, headmen of the Uncompahgre, Uintah, and White River bands, respectively, were prominent in the Indian affairs of Uintah Valley. Bennett, a full-blood Oneida Indian, had been sent to the Uintah Valley by the BIA to explain a new program intended to end the hardship Indians had been subjected to when their lands were allotted. They visited with one another, as hundreds of Utes milled about them, outside the one-room schoolhouse at Fort Duchesne on December 19, 1936.

The members of the three bands had just voted, 347 for and 12 against, to ratify a constitution and by-laws that the BIA had prepared for the Utes.[147] The documents were for model organizations, like those all Indian groups were being urged to adopt, and consolidated the three separate bands of Utes into a single tribe. The organization would be called the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.[148]

Pawwinnee, Atwine, and Appah found no cause for optimism in the arbitrary consolidation of the three bands, for each was separate in its membership, society, and thinking. They could not be consolidated in any meaningful sense, and it was important to the Utes in all three bands that they continue to be led by their respected elders.[149] Bennett assured them they could continue to do so, that each band would be protected in its property rights, and that each band would merely select two delegates to be on the tribal business committee.[150] What seemed more hopeful to the Ute leaders was Bennett's promise that more than 200,000 acres of lands opened to settlement in 1905 would be returned to tribal ownership if the bands accepted the constitution.[151] The Utes desperately needed the land to graze their livestock.

The proposal just ratified was part of the "Indian New Deal" initiated by John Collier, appointed in 1934 as President Roosevelt's commissioner of Indian affairs. Collier was attempting to spearhead a new and more enlightened approach to the problems of Indian citizens, by repairing the damage that had been done by the allotment system. His Indian New Deal provided for ending the loss of Indian land produced by allotment and for the purchase of additional

lands with tribal funds, provision of social and economic services, and recognition of the importance of Indian communal life and values.[152]

The new Indian commissioner came to his task with outstanding credentials, and the policy he was advancing had the support of the best intellects of the day. For more than a decade Collier had crusaded on behalf of Indians. He appointed distinguished scholars of Indian affairs to administrative posts. The Indian Reorganization Act (IRA), or Wheeler-Howard Act,[153] which was the basis for the Indian New Deal, was based on a lengthy report by the Institute of Government Research (the Brookings Institution) commissioned by Congress in 1928 at the request of Secretary of Interior Hubert Work, under the direction of Lewis Meriam. The Meriam Report, as it became known, exposed as folly the notion that Indian culture could be changed by forcing the allotment of the tribes' commonly held land base.

Collier organized a meeting of Indian scholars and interest groups at the Cosmos Club in Washington, D.C., in 1933 to help formulate the new policy. Meriam chaired the meeting, but no Indian groups were invited, nor were any tribal leaders asked for their opinion.[154] The Meriam Report concluded that attempts to change the Indian culture by legislating changes in its economy were a prescription for separating the Indian from his property, for they failed to take account of the Indian way of life and its emphasis on communal living and rights. The inevitable effect, predictable to anyone who had a feeling for what it meant to be an Indian, was that individually owned Indian property would fall into the hands of more aggressive non-Indians and the Indian would be left destitute.

There should be "an experiment . . . with the modern business device of the corporation," the Meriam Report suggested. "The corporation would own the property, keep it intact, and conserve and operate it as a great national asset," while the Indians would "have a voice in the management and would have the opportunity to participate in the business, and to understand the problems, and to learn how things are done."[155] The IRA corporations were intended to implement that recommendation.

Indians must not be allowed to sell their interest in communal lands and live off the unearned proceeds, the Meriam Report warned, for that was one of the fundamental mistakes of the allotment system. Only if the proceeds were used "for land or for other productive enterprise" should the sale of shares in the proposed corporations be permitted.[156]

Despite Collier's good intentions, there was a definite arrogance in formulating Indian policy without consulting any Indians, many of whom were

opposed to the IRA because of the requirement that tribal constitutions and charters be approved by the secretary of the interior. Definition of qualifications for membership in a tribe by the BIA, rather than the custom of the Indians, amounted to further arrogance and subjected Indians to increased bureaucratic control. The effect was to force another northern European-style system on the Indians. Though better conceived than the allotment policy, it was still foreign to their way of life. Even worse, IRA provisions effectively deprived any Indian groups who accepted it of self-government and jeopardized what remained of their rights under treaties.[157]

Pawwinnee, Atwine, and Appah were not unaware of these negative aspects, but the important thing to them was the land. In addition to the promised restorations, Congress would grant additional lands to compensate them for the Uncompahgre Reservation, and tribal funds would be used to purchase even more acreage within the Uintah Valley.[158] Everyone, including Bennett, knew that the Utes had voted in favor of the constitution because they wanted the land.

Time would prove that the Utes had been lied to again. The new IRA corporation would sweep them into a bureaucratic maze they could neither understand nor cope with. The promise that they could continue under the leadership of their respected elders would be ignored.

The promise of restoration of their land was kept, however, at least within the limits of what it was possible for Collier to do. Approximately 236,249 acres of Uintah lands remaining in the public domain were restored to the reservation by an order of the secretary of the interior dated August 25, 1945. Tribal funds were used to purchase some 33,125 acres in the Hill Creek area, south of the former Uncompahgre Reservation, and the Act of March 11, 1948, set aside approximately 510,000 acres for the Utes there.[159]

## THE TERMINATION ERA

In 1953 a new group of well-meaning non-Indians in Congress and the BIA decided that the American Indian must be "freed" or "emancipated,"[160] as other disadvantaged groups in society had been. The change of U.S. Indian policy to "termination" and the end of the Indian Reorganization Act, was marked by the so-called termination resolution of June 9, 1953.[161] For the Northern Utes it was preceded by and *pari materia* (part of the same subject, to be construed together) with the so-called share-and-share-alike resolution of June 1, 1950.[162]

A three-day meeting of the Colorado Utes—the Uncompahgres and the White Rivers—had convened at Fort Duchesne on May 29, 1950. The meeting

Meeting of the Colorado Utes, July 24, 1950. Photograph by Carl Iwasaki, *Life Magazine*, © 1950 Time Inc.

had been called by John S. Boyden, the tribal attorney, and Ernest L. Wilkinson of Washington, D.C., special counsel for the Utes for the claims based on the loss of the Colorado lands. Both Boyden and Wilkinson were prominent Mormons, nominal partners in the prosecution of the Colorado claims, and allies of Senator Arthur V. Watkins (R.-Utah), himself a prominent Mormon.

"This is probably the most important meeting that you Ute Indians have had since the White Rivers and Uncompahgres were driven from the State of Colorado and placed on this reservation," Wilkinson said. "You will note that some representatives of the press are present. We have Mr. Baron Beshoar, who is here representing Time Incorporated. Mr. Beshoar will be here today and tomorrow taking pictures of your reservation and we want you to cooperate with him. Mr. Carl Iwasaki of Life Magazine has come here to take pictures also, so that the story of this meeting will be told later in Life Magazine."[163]

The lawyers were announcing the settlement of the claim of the Colorado Utes for the loss of the entire western slope of the mineral-rich Rocky Mountains at the time of the 1880 removal agreement. Statutes of limitation would ordinarily bar such an ancient claim, but a special Ute jurisdictional act of June 28, 1938, waived that bar and conferred jurisdiction on the U.S. Court

of Claims.[164] The settlement was for $32 million, subject only to approval of the Indians who owned the claim.[165]

"The Uncompahgres and White Rivers are the Indians on this Reservation who are entitled to share in the judgments on the Colorado lands," Wilkinson declared. "The Uintah Indians have no right to share in those judgments."[166]

The words were then translated into the Ute tongue. There was a long silence. The Utes neither spoke nor looked at one another. Finally, an old man addressed the gathering: "The distribution of the money should be only to the White Rivers and Uncompahgres and keep out the mixed-bloods."[167]

"There is one thing though, that I am sure you completely misunderstand," Wilkinson quickly replied. The lawyers were unwilling to accept the suggestion that the mixed-bloods, who were virtually all Uintahs, would not be allowed to share in the funds awarded to the White Rivers and Uncompahgres. "You seem to think you can settle this case without settling the dispute between yourselves. You can't. The Attorney General has already told me he will not consent to any settlement in this case unless you Indians get together and settle your own differences."[168]

Boyden tried to explain his Washington confederate's statement:

> Any time the Uncompahgres just say that the Uintahs have nothing to do with it, that's what you think, it's a disputed question.
>
> Now since the time of the 1880 agreement the Uncompahgres have also been taking Uintah money. Last winter, you got a per-capita payment. Every bit of that or the most of it, at least, came from your oil royalties, which came from Uintah ground, but Uncompahgres took their share.
>
> Suppose you were successful in saying that this is just the money of the Uncompahgres and the Uintahs have no interest in it. Then all the oil produced, not only now but in the future just produced on their land would go to them.[169]

The two lawyers were there pursuant to a June 11, 1946, amendment to the Ute jurisdictional act[170] that permitted them to be paid out of the Utes' settlement, even if no money was actually paid to the Utes, for services rendered to the government. They had a special reason for helping the government get the agreement, for they faced the prospect of losing perhaps the largest fee in the history of Indian claims litigation if they could not persuade the Utes to pool their resources. The attorney general had indicated that he would not consent to settlement if the three bands of Utes did not end their disagreements.

"A letter went to Watkins in which it stated that we should all separate, each band go by himself," Reginald O. (Rex) Curry, business manager of the tribe, observed, "and he didn't like that."[171]

"And so," Boyden proposed, "I thought that if you all put your claims in together like this resolution said, not only would you be sharing with the Uintahs, but you'd go on sharing in the money in the oil that they've got on theirs." He continued, "And then their claim is supposed to be a good claim." The Uintahs had claims of their own for the wrongs of the Spanish Fork treaty which were yet to be settled. "It looks like a good claim for the Spanish Fork and if they win that claim, then under this resolution they share that money with you."[172]

The proposal was greeted with another long silence. The lawyers and press representatives were anxious. These Indians seemed not to comprehend what a large sum $32 million was—or didn't they care?

"We have not decided yet," Oran Curry finally said. Oran was Rex's father, but unlike his son, who was a Uintah under the Utes' matrilineal system, Oran was a member and respected elder of the Uncompahgre band. "When we hold our meeting down there at Ouray we will give you our decision." Then he said, "One party here isn't going to do our business for us. There are many little things that we will have to dwell upon before we can finally come to an understanding among ourselves and get our minds set, so that we will be able to decide intelligently."[173] Whether the "one party" he referred to was Wilkinson, Curry, or Boyden was unclear.

"I asked your business committee not to say anything to anyone about it," Wilkinson responded, as if Oran's reference was to him. "If they had told everyone about it at that time and it had gotten in the newspapers, it would have disturbed our negotiations with the Department of Justice."[174]

"We are racing against time," Rex Curry urged. "We only have a limited amount of time to get this in there, or the judgment will be next year."[175]

Silence again overcame the assembled Utes. The lawyers fidgeted nervously in its indictment. "The reason I was urging you to act hastily," the Washington lawyer finally confessed, "is that unless you do, you may not be able to get this money in this year's appropriation bill. Now that's the reason I was asking for hurried action. And I have promised myself to be back in Washington on Thursday so that I could give the answer to the Attorney General."

"Just what difference does that make?" Oran Curry asked. "You don't have to stay here. You can go on home, or you can wire back and ask for a few days delay. We've waited these 13 years. I think we can still wait again. Another 5 years won't matter."

"You can wait 5 years, I can't," Harriet Wyasket pleaded, her tattered blanket, wrapped around her like a shawl, and the children at her side more eloquent than her words. "People are anxious to get it. You got a job."[176]

"*Hou*!" someone shouted. "*Hou*!" others replied, as they realized they were being promised money, and quickly, in return for hasty action.

The Uintahs were neither invited to the meeting nor given a voice. The Uncompahgres and White Rivers were the Colorado Utes, and they were urged to vote hurriedly. The older and wiser Utes, like Oran Curry, resisted the pressure for a hasty decision. Opposition finally developed, as it became obvious that the information necessary for the respected elders to arrive at a careful decision according to their tradition had been kept secret. The meeting recessed while the elders of the two bands conferred.

When the meeting reconvened two days later, on June 1, 1950, Wilkinson announced that it had somehow become a meeting of all three bands. "Resolution No. 3 is the resolution that has been changed slightly," said Wilkinson. (The resolution that the Utes had refused on May 29 was prepared and in Wilkinson's hand. Wilkinson claimed that the Uintahs, who were not invited to the meeting, had adopted it.) "I'll tell you first what it means. It's the resolution that provides that [with] respect to any money coming from the Colorado land, also any money coming from the Utah land, also any money as to any dispute to the ownership on the reservation and any money coming from that land, all be it resolved by you agreeing that all members of the three tribes shall share equal." The White River and Uncompahgre Utes were being asked to resolve that the Uintahs' land be shared, in exchange for a share of the $32 million. But even Wilkinson recognized there was a problem with nonowners resolving that they would share in the Uintahs' land. "In order for it to be absolutely valid," Wilkinson said, "we want it to be voted upon separately by the Uintah band alone."

"They have already voted on it," Wilkinson then said, though there is no record of a separate Uintah band meeting and the minutes are clear that there was no vote by the Uintah band at the White River/Uncompahgre meeting. Wilkinson did ask Julius Murray, a Uintah member of the business committee, "Would you move the adoption of this for your band?" Murray did so, but the only vote taken was by the Uncompahgres, as follows:

> *Mr. Wilkinson:* We want also the number voting for the other two bands, so let's now have the Uncompahgres stand so we know how many Uncompahgres voted in favor. All those voting in favor (29 voted for it).[177]

Chief John Pawwinnee and tribal council, July 24, 1950. Photograph by Carl Iwasaki, *Life Magazine*, © 1950 Time Inc.

"In a situation where the traditional rights of the various bands are affected, the various bands should resolve the issue on a band basis," William Reed, the other Uintah representative on the Tribal Business Committee, objected.[178] Many of the White Rivers and Uncompahgres also objected and walked out before the vote.[179] Others, including Rex Curry's sister, Liz Bumgarner, asked for an investigation.[180] Wilkinson was apparently so concerned about the $32 million judgment and so convinced that the Uintahs' ownership

of the Uintah Valley land was insignificant by comparison, that he never called for their vote or even determined if they were present pursuant to proper notice.

The three bands, despite their protests, became joint owners of both the land and their respective claims. Senator Watkins caused Wilkinson's "share-and-share-alike" proposal to be enacted into law and embodied in a "share-and-share-alike amendment" to the Ute jurisdictional act:

> The resolution adopted June 1, 1950, by the members of the Uncompahgre, White River and Uintah bands of Indians compromising and settling all existing controversies between themselves . . . *as to ownership of land* within the Uintah and Ouray Reservation and income issuing therefrom by providing that the same shall *become the tribal property of all Indians of the Ute Indian Tribe of the Uintah and Ouray Reservation without regard to band derivation* is hereby ratified, approved and confirmed.[181]

Senator Watkins, who spent his childhood near the reservation and had been a judge in Uintah County before his election to the Senate, was the most influential person in Indian affairs in Congress and became the leading proponent of termination, which was being formulated simultaneously with the share-and-share-alike amendment. Watkins claimed that BIA trusteeship over Indian land and money was the source of the so-called Indian problem. He maintained that the Indians should be "freed" of BIA control and that in the process they would be brought into "the mainstream of American society": "Following in the footsteps of the Emancipation Proclamation of 94 years ago, I see the following words emblazoned in letters of fire above the heads of the Indians—These People Shall Be Free."[182]

Watkins seemed to believe that the Utes' nonexploitive property system and tradition of leadership by respected elders was inferior to American democracy and that Indians must be forced "to be like the rest of us."[183] When spokesmen for Indian rights protested that the allotment policy had demonstrated that eliminating BIA protection of Indian property resulted in destitution as non-Indians acquired it, Watkins justified his view and suggested that BIA protection resulted in indolence.[184] President Dwight D. Eisenhower's commissioner of Indian affairs, Glenn L. Emmons, adopted Watkins's point of view and made it the main goal of the Eisenhower policy toward Indians.

Watkins was determined to prove that his termination program would work. He considered it important to have a tribe from his own state terminated

first, and used the Utes' Colorado judgment funds and the events culminating in the share-and-share-alike amendment to force the Utes to serve as the model.[185]

Watkins insisted on termination as a condition to releasing the money deposited for the Utes with the treasury pursuant to the share-and-share-alike amendment. He wrote a letter to Rex Curry, business manager of the tribe, dated February 14, 1954, giving the Utes until May 15, 1954, to come up with a long-range program. Watkins suggested they should read over the termination bills he had introduced concerning other Indian tribes to get an idea of the kind of program that would be required. If they did not adopt such a program, Congress would do it for them.[186] On August 27, 1954, Watkins caused a termination law to be enacted as to the Utes.[187] Unlike any other termination law, it provided that the Northern Utes would be divided into two groups, "mixed-blood" and "full-blood." The mixed-bloods would be terminated immediately; the full-bloods would be given additional time to prepare for an end to federal supervision and would be terminated at a later, unspecified date.

Thus by midcentury, when the termination era began, three separate groups of Utes—denominated Uintah, Uncompahgre, and White River—jointly occupied the Uintah Valley Reservation that had been promised as the exclusive home of the Uintahs. The Uintah and Ouray Reservation had been restored to approximately half a million acres: with land acquisitions in the Hill Creek area, the tribe owned over a million acres.[188]

Many members of the Uintah band were of mixed ancestry. By 1847 they already included many Navajos, Shoshones, Paiutes, and others who had been adopted into the band. They had adopted trappers as early as 1825; the coming of homesteaders increased the mixed composition of the Uintahs. Tribal ordinances nevertheless declared all on the census roll of July 1, 1935, "Ute," regardless of ancestry.[189]

The Uncompahgres, by contrast, and to a lesser extent the White Rivers lived in areas remote from contact with the newcomers and did not intermarry as frequently. Thus they remained largely full-blood.[190]

By 1954 the Uintah Valley Reservation was a small remainder of what Soweitte and Tabby had bargained for as a place where the Uintah Ute culture and way of life could be preserved. Mormons occupied virtually all of the choice bottom lands and lands along the commercial arteries. Entire cities populated by non-Indians had sprung up within the confines of the valley. The promise given at Spanish Fork that no white person would be permitted to reside there without permission of the Uintahs was honored in its breach.

# 1

# THE SEASON OF THEIR INNOCENCE (1953–54)

*Sapaniese Cuch . . . stated that land was eternal and belonged to a person even though dead, that it was part of their birthright, the same as they passed on their own blood to their children; that the land was theirs and that . . . the Indian didn't wish this association with his white friends which robbed him of his inherited rights and that they should not be disturbed in what little they had left.*

*Minutes, Whiterocks Community of White River and Uintah Indians, March 14, 1945*

On November 27, 1963, Elizabeth Curry Bumgarner, a lineal descendant of Chief Ouray but a Uintah by virtue of the Utes' matrilineal kinship system,[1] lay in an open coffin in Roosevelt, in the Uintah Valley. Victim of an automobile accident at age forty-five, Liz, as she was known among her peers, had risen during her lifetime to leadership in the Ute Tribe of the Uintah and Ouray Reservation, Utah, just as her famous progenitor had among the Colorado Utes. She was a valued leader, particularly among the Uintah Utes of mixed ancestry. Next to her body stood her brother, Rex Curry, business manager of the Ute Indian tribe of the Uintah and Ouray Agency, and John S. Boyden, a tall, well-dressed lawyer from Salt Lake City. Confidant and mentor to Curry, Boyden had been the tribal attorney since November 15, 1945, and legal adviser to all Ute Indians, mixed-blood and full-blood alike.[2] It was appropriate that they stood together, as if they were one.

Most of the throng of mourners were Indians. Among them was Preston Allen. His somber gaze was fixed on the two men standing before Liz's coffin.

Allen was the president of the Affiliated Ute Citizens of the State of Utah (AUCU), formed seven years earlier to represent the mixed-blood Utes and authorized by law[3] to divide the assets of the Ute Indian tribe between its full-blood and mixed-blood members. Liz had been one of Preston's fellow directors. In another era, during the days of Wakara or Ouray or even when Old Tabby had led the Uintahs to the Uintah Valley, Preston might have been an important man—even a respected chief, with many horses, tipis, and followers. Now, the AUCU was largely inactive. Boyden claimed that the AUCU no longer existed, because it had completed the work of dividing the assets of the tribe, and that there was no need to elect a replacement for Liz.

Preston's spirit was oppressed to the point of breaking, and he was uncertain of his future and that of the AUCU membership. The AUCU had been established after the 1954 enactment by Congress of the termination law, which declared that if they were not more than 50 percent Indian ancestry, Utes were no longer considered members of the tribe by the federal government.[4] As the very considerable assets of the tribe, which were held in trust by the United States or subject to approval by the secretary of the interior as to their sale until August 27, 1964,[5] were communally owned, the division of assets was necessary to complete their "termination."[6]

Virtually all of the Indians on the reservation affected by termination were members of the Uintah band. The Uncompahgre and White River bands had very few members of mixed ancestry, and their numbers were relatively undiminished by termination. The Uintah band, in contrast was split, the largest part being excluded from membership in the tribe and classified as "mixed-blood."[7] Those full-blood Uintahs who remained part of the tribe were therefore a doubtful continuation of the once-proud Tumpanawach Utes who occupied the fertile valleys of central Utah at the time of first Euro-American contact. The two figures paying their respects to Liz, one Indian and the other a reputed friend of the Indians, were instrumental in dispossessing the Uintahs and dismantling their economy and social structure.

Preston was suffering hard times financially. A cattle rancher all his life, the actions of Boyden and Curry had forced him to abandon his little ranch situated at the base of the Uintah Mountains. His livestock were excluded from the tribe's common range; there was no feed for his herd and no way for his ranch to go on. He sold his cows and lived on the unearned income generated by the sale for as long as he could. Then he was forced to seek menial employment in the non-Indian community.

Like Preston, many Uintahs were out of work. No longer considered Indians by the tribe or government officials, they were denied access to credit,

public health services, employment services, and education—rights guaranteed to those holding Indian status. As a result their children were often not properly cared for, even abandoned.

Preston got a job at the home and school for Indian children sponsored by the Baptist mission on the reservation. The tragedy that had claimed Liz as well as Preston's own recent failures might be laid at the feet of the two figures now paying her their respects. There was little doubt about that, at least not in Preston's mind, for they had advocated the termination policy. Preston's gaze became focused, intense, and accusatory. He imagined that Liz would have shared his feelings.

Preston's gaze moved from the two men standing at Liz's casket to the other people in the room. He focused on Elmer Hackford, Art Workman, and Lula Murdock, also Uintah Ute directors of AUCU and colleagues of Liz in the councils Preston had presided over. Like Liz and like Preston, each had seen his or her economic and social relationships destroyed by the policies sponsored by Curry and Boyden.

Hackford, once a sheep rancher, had been forced to sell his animals and seek work as an ordinary laborer for a non-Indian trucking company. He, like Preston, found that there was not enough feed after he had been excluded from the range lands owned by the tribe.

Workman had formerly operated Sam-N-Liz's Store, as the Indians knew it, which Liz Bumgarner founded and sold to Art. He tried to make economic use of the AUCU's assets, by attracting outside investors to join with him in development of its commonly owned lands. When Boyden and Curry prevented him from doing so, influencing the commissioner of Indian affairs to adopt regulations providing that only the tribe could develop the lands, Art gave up and went to Salt Lake City, where he was working as a janitor.

The lives of virtually every mixed-blood Indian gathered here were tinged with tragedy, the direct and indirect result of practices devised by Curry and Boyden. All of the mixed-bloods had been stripped of their identity as American Indians, or at least of the benefits of Indian status by the Termination Act,[8] and denied their traditional means of livelihood in the process. It seemed to Preston that they had been denied their culture, or at least their way of life, which was a more serious matter. They were now locked in a desperate and futile struggle for survival in the non-Indian society of the western states, a culture never claimed as their own, which they never desired as their own, and which stubbornly refused to accept them or to understand their plight or that of thousands of American Indians like them throughout the United States.

Even this Christian funeral seemed symbolic of the events that had destroyed their lives. Liz, as most of the Indians, was now Christian, but it seemed that becoming so made it impossible to end their lives with the dignity of their ancient traditions. Wakara had departed mortal life seated high on a mountain, to remain ever watchful over those he led, while nature did its work of returning him to the soil from which the circle of life began.[9]

Francis McKinley, a full-blood Uncompahgre, and Ab Harris, a mixed-blood Uintah employed by the Bureau of Indian Affairs, were there. They moved closer to the casket and stood next to Boyden and Curry.

Preston's mood changed to pity at the sight of McKinley and Harris. Again, he imagined Liz sharing his feelings. McKinley and Harris had aided Boyden and Curry in reducing the mixed-bloods to poverty. Yet they themselves had also suffered, perhaps even more. They had not been deprived of the means to put bread on their families' tables, for they held well-paying jobs, but they must now face the resentment of Utes, mixed-blood and full-blood alike, over policies they helped to implement. They were now shunned, or at least it seemed so to Preston.

McKinley had moved to Tempe, Arizona, where he worked in Indian affairs with the National Indian Training and Research Center. Curry and Harris, unlike McKinley, had been able to keep their jobs with the tribe and the BIA because they had Boyden's support. Yet even they seemed touched with tragedy now, and not just because it was Curry's sister who lay in the casket. They had so far compromised the interests of their fellow mixed-bloods that the others in the room seemed to avoid them.[10]

The distinguished lawyer standing next to Curry was responsible for the hard times that had fallen on the Uintahs, the mixed-bloods in particular, more than anyone else. Of that Preston had no doubt, but he was unsure of Boyden's motive. Was he a villain, who set out to injure the Uintah Utes and acquire their property for the White Rivers and Uncompahgres who remained as full-bloods, or was he the unwitting tool of the misguided policies imposed on Indians by Senator Watkins and Congress? Or was it possible that Boyden was captive of the same circumstances that had affected the Indians and that he had only sought to salvage something for those Indians who would continue to be his clients after the mixed-bloods were declared no longer Indian?

Preston did not understand how "emancipation" applied to the Uintahs or any other Indians. He, like most Indians, thought they had always been "free." They were free to live their lives as Indians or to live as the non-Indians surrounding them. Why hadn't Boyden understood that Indians did not lack freedom just because their culture, economic system, and aspirations were

different? Why hadn't Curry, Harris, and McKinley been able to make Boyden and Watkins understand?

Preston returned the smart, military-style salute of Harvey Natchez as he walked by with a group of full-bloods. Natchez, a war hero who served under General Eisenhower, was the first American to enter Berlin at the end of World War II.[11] Eisenhower was instrumental in crushing the fascists who had practiced cultural genocide, but his commissioner of Indian affairs, Glenn Emmons, and Dillon Meyer, before Emmons, had "emancipated" Natchez by insisting on "terminating" his way of life. Meyer and Emmons tried to force Indians off their reservations, through the "relocation policy," under the guise of "assimilating" Indians into non-Indian society.

Preston Allen had enlisted in the army and risen to the grade of sergeant. Preston believed he was fighting to preserve *all* of his rights—his rights as a Uintah Ute, an Indian, and an American. At least ninety-seven Utes from this very reservation had loyally served their country in the war; five had died.[12] Fred Conetah, the Ute archivist, was decorated with the Purple Heart and Bronze Star.[13]

Although Boyden, Curry, McKinley, and Harris had not committed overtly violent acts, the effects of termination had been just as destructive to the Indian way of life. In a very real sense, the effects of termination—unemployment, poverty, and alcoholism, and loss of identity with the tribe—contributed to Liz's demise.

Excessive drinking, which Preston had been told contributed to Liz's automobile accident,[14] was rampant on the reservation. The suicide rate among Indians had skyrocketed with the termination program, reaching twenty times the national average. Liz's oldest son, Reggie, was drinking hard. Would it claim his life too?

Preston spotted Anita Reyos, Ezilda (Dot) Hendricks, and Marguerite Murray Hendricks (known simply as Marguerite Murray), three mixed-blood Indians of the Uintah band, in an intense discussion. He caught fragments of conversation about used car dealers in the vicinity of the reservation who were cheating Indian customers. Such complaints had become common among mixed-blood Utes, particularly during the year just passed, for they frequently went to used car dealers to exchange their property for cash to meet their daily needs—a practice Liz Bumgarner may have started. The dealer usually required them to take a used car as part of the bargain.

Preston heard one of the women say they should talk to a lawyer but paid no particular attention to their complaints. He had heard them before. He could not know that this conversation presaged another decade of

controversy on the reservation, more intense than the decade that had just passed.

Six months later, three Indian women appeared at my law office. "We just want to know if we got any rights." That was the bottom line for Anita, Dot, and Marguerite. "They cheated us on that car. It had a flat crankshaft."

It was a hot summer day in 1964. A young lawyer, I was listening to my first clients. My office, furnished with a used desk, an empty filing cabinet, and four chairs, had been open for just a few days.

In the six months after Liz's funeral, Anita, Dot, and Marguerite had been in numerous lawyers' offices between the Uintah Valley and Salt Lake City. More experienced practitioners, with real business to conduct for important commercial clients, appraised the plight of the three Uintah Ute women as not financially remunerative and turned them out as politely as they could contrive.

The most recent lawyer they approached had been a public prosecutor, H. Ralph Klemm, assistant U.S. attorney for the District of Utah. Klemm also had a new law office, in the U.S. District Court on the second floor of the Post Office on Main Street in Salt Lake City.

Klemm's desk and office were far from uncluttered. He had many filing cabinets bulging with weighty problems of water adjudications, rocket explosions, and securities frauds inherited from his predecessor, who just happened to be me. Klemm had no time to talk to three Indian women about their "flat crankshaft," but he thought I would be desperate for my first case, *any* case, and it would be a fine joke to send these Indian women to me. It was the familiar "dump your pro bono headaches on your buddy" game.

Anita, Dot, and Marguerite had been given the $350 used jalopy with the "flat crankshaft" as partial payment for stock in the Ute Distribution Corporation. Now the car wouldn't run.

"But Uintah Valley is hundreds of miles away," I explained. "The cost of traveling to the reservation to present the problem to a judge would be more than the value of the car."

"There are others who have the same problem," the three Indian women continued. "We all got an old wreck of a car."

As desperate as I was for my first case, I was not interested in an old car with a flat crankshaft. What did interest me, however, was that the car was taken in exchange for a stock certificate. I knew from my work as an assistant U.S. attorney that sharp practices in securities transactions, even when they involved modest amounts, sometimes led to larger claims for a group of persons similarly imposed on. My curiosity thus enabled the women to secure

the first effective legal counsel they or any mixed-blood Uintahs had with respect to the Ute Distribution Corporation, other than that of the tribal attorney, John S. Boyden, since the termination policy had been implemented.

The flat crankshaft, or at least the stock certificate traded for it, led straight into the labyrinthine affairs of the Ute Indian tribe of the Uintah and Ouray Reservation, the relationship between the Uintah band and the other two Indian groups, the termination policy's division of the tribe into "mixed-blood" and "full-blood" members, and the placement of their share of Indian property in Ute Distribution Corporation and two range corporations. An epic paper chase resulted. It included a succession of appeals to Congress, to the Utah State Bar Association, to any trial-level tribunal with jurisdiction, two separate petitions to the U.S. Supreme Court, and one hearing before the Court on the merits. Contrary to the common belief that the courts are solicitous of Indian rights and claims, those efforts, with rare exceptions, were rejected.

The chase established legal precepts that would govern not just American Indians but wealthy investors on the most sophisticated securities exchanges, mighty entrepreneurs, and swindlers' dupes as well for many years. The process would dominate two decades and involve me in the triumph and tragedy—mostly tragedy—of the Uintah Utes and those who had profited handsomely on their reputation for having championed Indian rights. I soon learned that the "termination" imposed on various Indian groups was generally recognized as a failure.[15] I also learned that the familiar term "white" is inappropriate to distinguish non-Indians from the mixed-bloods, for most Uintahs are white in appearance and are descended from non-Indian trappers and settlers. The terms "Euro-American" and "Anglo-American" or "Anglo" seem more apt and are used herein.

## THE COMMENCEMENT

Early one summer morning in 1954, ten years before Liz Bumgarner's funeral, Preston Allen heard Coyote's song to the moon. It had him worried as he strode purposefully down the dirt path leading to the tribal offices at Fort Duchesne. While wise Wolf, the legendary creator of the ancient Utes' world, embodied strength, courage, and cunning, Coyote, Wolf's mischievous little brother, brought misfortune.[16]

Wolf and Coyote were familiar figures in the legends recited by the old-time Utes to instruct their followers in native values.[17] In 1954 the Utes living on the reservation still had a strong identity with their traditional ways and symbols such as Wolf and Coyote. Time for the Indian, even as recently as

1954, was often expressed as morning, midday, or evening. The reservation Indian knew year's end by the falling of the snow.[18]

The Uintah Valley was remote, and even within the valley the Ute and non-Indian cultures existed separately. Preston Allen and the other adult Utes on the reservation had attended Indian boarding schools. It was not until 1953 that most Indian children in the Uintah Valley began to attend public schools with non-Indian children.[19]

Preston Allen was thirty-nine that morning in 1954. He had been elected to the planning board of the Altonah Indian Community, a remote collection of widely separated farms and ranches at the base of the Uintah Mountains where his own ranch was located. Preston was then elected chairman of the Altonah Planning Board and its delegate to the tribe's central planning board.[20] The planning boards were supposed to give the people a chance to make recommendations for the conduct of their affairs and make plans for the use of the White River and Uncompahgre share of the $32 million that Congress had already appropriated and held in trust to pay the Utes' judgment for some 4.5 million acres of the west slope of the Rockies taken from the Colorado Utes at the time of the 1880 removal agreement.

An act of Congress of June 28, 1938, provided that any judgment would be subject to appropriation by Congress only for the purchase of lands and building of homes.[21] An act of August 21, 1951—the same one that included the share-and-share-alike amendment—amended the act of June 28, 1938, to provide that one-third of the funds could be used for any purpose designated by the Tribal Business Committee and approved by the secretary of the interior, including per capita payments, but that per capita payments of more than $1,000 must be approved by further legislation.[22] The changes permitted by the 1951 act necessitated an emergency three-year program approved by the Tribal Business Committee and the secretary of the interior, so that one-third of the funds could be paid to the individual Indians as a per capita payment[23]—to alleviate the Indians' shocking poverty. Now there must be a long-range program for the balance of the money to help the Utes achieve permanent economic recovery.

Recommendations were carried by Preston and each community's delegate to the central planning board. The latter consolidated the various proposals into a unified program for presentation to the Tribal Business Committee.

The tribe and its business committee—unlike the planning boards and the three bands of Indians—did not represent the Indians in any realistic sense. The business committee was not even part of the Utes' traditional social structure. The three bands, led by their respected elders, in fact represented the Utes. The

function of these two different bodies was commonly misunderstood or ignored by Congress and many administrators sent among the Utes. The tribe had been created as part of Commissioner John Collier's Indian New Deal, as an administrative level between the BIA and the three bands.[24] Congress and the BIA treated the tribe as representing the Utes, however, and ignored the bands. The tribe, therefore, would have responsibility for administering the remaining share in the $32 million on this reservation.[25] Approval of the tribe and the secretary of the interior and an appropriation by Congress was necessary for any expenditures.

Preston walked past the long council hall, really a remodeled army barracks. The sight of it caused him to think of the controversy there during the past year. It all had to do with "termination."

Preston really didn't know what termination was.[26] Neither did any of the other Utes, but it had been prominent in the discussions of the planning boards and in the general council meetings. There had been rumors that Congress would require accepting termination before the balance of the Northern Ute share of the $32 million would be released. Julius Murray, a Uintah member of the full-blood planning board and delegate to the business committee, wrote to President Eisenhower on February 13, 1953, asking for an appointment to discuss the rumors. Orme Lewis, assistant secretary of the interior, denied the rumors in a letter dated April 8, 1953: "As to termination of Federal trusteeship, let me assure you that there is no immediate prospect of the Bureau of Indian Affairs withdrawing its protection or services to the Indians of the Uintah-Ouray Reservation. . . . Before any such withdrawal takes place, there will be a thorough and complete discussion with the Tribe."[27]

Contrary to Lewis's assurances, Senator Watkins wrote to Rex Curry just a month later, on May 12, 1953, with a threat that termination must be accepted as a condition to receiving any more of the $32 million:

> You will recall that in 1950, the Ute Indian tribes were awarded a judgment. At the end of three years you were to come to the Congress with a definite program for the rest of the ten years. I am sending this letter as a warning to you and the members of your tribes that Congress will expect you to keep very fully and completely your promises made to the committee when this legislation was approved. . . . I have tried to be a friend to the Ute Indians and have done everything I could to further their cause and help them become free and independent citizens able to care for themselves.
>
> You should trust those with whom you labor day by day rather than those who come from the outside for the purpose of destroying unity.[28]

The threat was clear. Watkins understood the act of August 21, 1951, allowing the per capita distribution, to be subject to a Ute plan for their "rehabilitation," which the planning board was working on, to be concluded within seven years, and to include termination. Rex read the letter on a local radio station, adding, "We have known for some time that the government is pledged to withdraw its services."[29]

"Termination" was an extension of the relocation policy, which attempted to force Indians off their reservations, adopted by Dillon Meyer, President Truman's commissioner of Indian affairs in 1950.[30] It assumed that the special relationship between the United States and its Indian citizens, in which the United States held Indian land in trust and attempted to foster a climate in which Indians could manage their own affairs, was the source of and reason for the so-called "Indian problem." Watkins's notion was that if the Indian was given his individual share of the property and forced to take responsibility for its management, he would be just like everyone else. The United States would also be spared the cost of administering Indian affairs.

Termination failed to recognize that the special relationship amounted to additional civil rights for the Indian people. It was a solemn obligation of the United States dating from as early as the Northwest Ordinance of 1787, which declared that "the utmost good faith shall always be observed toward the Indians; their land and property shall never be taken from them without their consent; and in the property, rights and liberty, they never shall be invaded or disturbed."[31]

Indians throughout the United States were frightened by the new policy. It was forcing them off their reservations, out of their own culture, which stressed the values of communal living and nonexploitive common ownership of lands and into the cities where they found a life based on aggressive personal property values they could not cope with. Eisenhower administration policies were an indication of hostility to anything Indian. Whatever the details, the Indians were sure termination would be another move against their way of life.[32]

Preston stomped the dust from his shoes as he passed the entrance of the tribal offices. It was here in this very building that he had been elected chairman of the central tribal planning board in January 1954.[33] An emergency developed almost immediately when Rex Curry explained to the board that Senator Watkins was insisting that the Utes accept termination.

"The business committee received a letter from Senator Watkins," Rex announced at the January 1954 meeting. "The time is coming when we will all be turned loose."

"Will they give us fifty years?" Liz Bumgarner asked her brother. "We need enough time for some of our little children to get educated, so we can be prepared to be on our own."

"We can ask," Rex said, "but it doesn't look like they will give us that much time."[34]

Watkins's letter, dated May 12, 1953, implied that the Utes were to ignore spokesmen for American Indians such as the National Congress of American Indians and the Association on American Indian Affairs who warned against termination.[35] They were to follow instead the advice of Rex Curry and John Boyden, who insisted on discussing termination. It seemed like more talk about getting "the Indians . . . off our consciences and out of our pocketbooks."[36]

Jim Atwine, then 84 years old, respected elder of the Uintah band and the last in their line of "chiefs,"[37] an office imposed by non-Indians, accused Watkins in a letter written for him by Clyde S. Johnson, an attorney in Vernal, of requiring termination as the price for releasing the Utes' money. The senator did not deny it. He replied in a letter to Johnson that "the Administration looks with disfavor upon straight per capita distributions," and that the Utes must "show that they had formulated a constructive program for develop[ment]" before they would receive their money.[38] Despite Watkins's threats, the planning board rejected termination and recommended, instead, that the Utes retain their special relationship with the government.[39]

In late 1953 and early 1954 the Uncompahgres in the Ouray community concluded that the recommendations of the planning board were merely extensions of the main features of the three-year program under which the per capita payments had been made. Fearful because the congressional policies Watkins was pushing so hard had been rejected, they refused to participate further in the planning process. The Uncompahgres were of the opinion that retaining the status quo was "without any enlightened approach to the hard core Ute problems" and particularly objected to the Uintahs sharing in the $32 million.[40] Only the Uncompahgres and White Rivers should share, they said, for the money was to compensate for wrongs done to the Colorado Utes at the time of the removal agreement. The Uncompahgres threatened to withdraw from the tribe if their demands were not met. Francis McKinley, spokesman for the Uncompahgres, was the only college-educated Indian on the reservation, other than Rex Curry. A strong advocate for his band, he had even gone to Washington to discuss the Uncompahgre position with the commissioner of Indian affairs.[41]

It was true that the money did not belong to the Uintahs, but it was also true that the land did not belong to the Uncompahgres—at least not until the act of August 21, 1951, imposed the share-and-share-alike amendment as part of

the change in the Ute jurisdictional act authorizing per capita payments. Preston had attended the contentious meeting on June 1, 1950, which preceded and resulted in the share-and-share-alike amendment. Although he was not allowed to vote on the proposal made by Boyden and Wilkinson because the Uintahs had not been notified to attend, it was a public meeting and many Uintahs went down to see what was going on.[42]

After the 1950 meeting the membership in all three bands voted not to continue Boyden's employment.[43] The business committee nevertheless recommended rehiring him, and the BIA did so.[44] Petitions and letters charging that Boyden was not serving the interest of the Indians but was looking after the interests of the government and the Mormons and other non-Indians[45] were sent by Julius Murray and Bill Reed, the Uintah delegates on the Tribal Business Committee, to Watkins, the superintendent,[46] and the BIA,[47] but they were ignored. Even though there was no share-and-share-alike resolution by the Uintah band, Congress had plenary authority over Indian property and could dispose of it without the owners' consent, and did so.

There was little else the Uintahs could do. They could not ask for repeal of the act of August 21, 1951, because Watkins had packaged the share-and-share-alike amendment with the amendment to the Ute jurisdictional act of June 28, 1938.[48] Repeal would therefore mean repeal of the authorization for per capita payments as well. Desperate as the Utes were for that money, anyone who suggested repeal would automatically be seen as acting contrary to the Utes' economic needs.

The events of that summer in 1950 caused factionalism in the Uintah Valley during the ensuing years. The Uncompahgres and White Rivers objected to the Uintahs sharing in the $32 million. The Uintahs objected that the Uncompahgres and White Rivers were given a share in the Uintah Valley reservation and its income.

It seemed to Preston Allen that those having control over the affairs of Indians, like Watkins, Boyden, and Wilkinson, should understand the Indians' way of doing things. Those who disapproved of what was proposed at a council of elders registered disapproval by sitting in silence. Boyden and Wilkinson were unable, or unwilling, to recognize that those who refused to vote or who walked out of the June 1, 1950, meeting had voted against the share-and-share-alike proposal. Watkins and Congress failed to recognize that the small handful of Uncompahgres who voted for the resolution were not a majority and could not speak for the Uintahs. The two attorneys and Watkins did not recognize that land was essential to the Indian way of life and for that reason Indians consistently opposed trading land for money.[49]

Despite the opposition of the planning board, Watkins continued to insist that the Utes accept termination as a condition to releasing the money deposited for them with the Treasury. He wrote another letter to Rex Curry, as business manager of the tribe, dated February 14, 1954, in which Watkins gave the Utes until May 15 to read over the termination bills he had introduced concerning other Indian tribes to get an idea of the kind of program that would be required. If they failed to adopt a termination plan, Congress would do it for them.[50]

Between March 14 and March 28, 1954, Robert Bennett, formerly the superintendent at Fort Duchesne and program officer for the BIA, came to the reservation and held meetings with the various Indian communities. Bennett was accompanied by Rex Curry and Francis McKinley. Their message was a simple one.

"They [the planning board] were told to make a plan, and they have not, so the Congress has made a plan for them," Bennett said when he met with the Uintahs and White Rivers at Fort Duchesne on March 16. Then he made good on Watkins's threat: "When they come to Congress they will be shown their plan."[51]

It thus became apparent what Francis McKinley had been doing in Washington. He had seized on Watkins's relentless pursuit of his termination ideas as a means of accomplishing the goals of the Uncompahgres. If only the mixed-bloods were terminated and the full-bloods were not, the desire of the Uncompahgres to exclude the Uintahs from a share in the $32 million might be accomplished.

Bennett and Rex Curry helped McKinley in his attempt to sell the Uncompahgre plan to the various Indian communities.[52] The three of them met with the Uintahs and White Rivers in the Whiterocks community. "The mixed-bloods are ready to be turned loose," McKinley declared, "so in order to save the full-bloods from this they should be separated." They met again at Whiterocks on March 28, and Bennett frankly admitted that "one of the main reasons for this Uncompahgre band plan was we felt that the mixed-bloods would be glad to take their share and be just like other citizens of the state."[53]

They ran into determined opposition to the Uncompahgre plan in each of the communities. "I have never been invited to their meetings," John Victor objected at the Fort Duchesne meeting on March 16. "I don't know what they do and I don't like their way of thinking. The other groups have not been invited to take part and present their side also."[54]

"We don't want to separate our property," Lawrence Appah protested at the Whiterocks meeting. "We want to be left alone as we were in the beginning."[55]

"I can't see where we can go along with this kind of a plan as we don't know all about this plan," Old Jim Atwine said at the Fort Duchesne meeting.

And at the Whiterocks meeting he said, "Let's keep everything we have in our possession and not split it up. It is not good to have anything taken from us and we should work to hold everything we Uintahs have."[56]

Bennett used economic inducements in an apparent play on the objection of the Uncompahgres and White Rivers to mixed-bloods sharing in the judgment funds. At the Whiterocks meeting he said, "It is better to get them off to themselves, and hereafter you people here will say who shares in the property and the money."[57] Bennett then advised the Utes to work things out at the General Council meeting of the tribe to be held on March 31, 1954.

When the General Council meeting was held, Waubin Wanzitzs, a full-blood Uintah, was designated chairman. As routine business was concluded and the meeting was about to adjourn, Ernest Wilkinson and John Boyden burst into the hall with Superintendent Harry Gilmore. They had been deciding for themselves, in a sort of rump caucus at the superintendent's office, that the Utes should agree to the Uncompahgre plan that Bennett had been discussing with them. McKinley followed them in and crawled under the table where Wanzitzs was presiding, apparently not wanting to be seen.

Wilkinson pushed Wanzitzs aside and announced that he had a resolution to read to the meeting. Wanzitzs retreated to the back of the room and stood against the wall. Rex Curry took over the meeting. The resolution was to accept termination of all Utes having less than 50 percent Indian ancestry.

Termination was not on the agenda. Notice that such a question would be considered had not been posted, and no Indian ever moved the adoption of Wilkinson's resolution. Faced with the lawyer's insistence, Julius Murray moved for a study of the feasibility and legality of the proposal and Curry finally called for a vote.[58] Before the vote could be taken, a large number of Utes, mostly Uintahs, walked out in a show of protest. Most of those who remained refused to vote.[59]

Preston recalled these events as he reached the BIA headquarters, located a short distance beyond the tribal offices, on a slight rise along the banks of the Uintah River. He went directly to the office of Ab Harris.

"*Hou*," he grunted in the Ute tongue.

"*Hou*," Ab grunted in reply.

Ab, with a profile reminiscent of an Indian head nickel, was himself a mixed-blood. His mother was Mary Harris, descended from the old trapper Jim Reed and his Ute-Shoshone wife. Most Uintahs had such mixed ancestry; but after more than a century in the Uintah Valley, living the Ute way of life, they were undeniably Indian. Ab, however, had a good job with the BIA. Ab's comfortable salary set him apart from the chronically unemployed and

impoverished average Ute. When Ab spoke, the Indians were never sure if he expressed his attitudes as a Ute or was merely doing the bidding of his employer.[60]

Ab was nevertheless one of the ablest Indians on the reservation. When the business committee designated a special Ute delegation on May 29, 1954, to go to Washington and present the Utes' long-range program to Congress, he was made part of it. Other members of the delegation were Rex Curry, chairman of the Tribal Business Committee; Harris, representative of the mixed-bloods; Connor Chapoose, representative of the Uintah full-bloods; and Russel Cuch, vice-chairman of the business committee and a White River. John Boyden, Superintendent Gilmore, who had been sent to Fort Duchesne less than two years earlier, and Commissioner of Indian Affairs Emmons also accompanied the Special Delegation.

When Preston asked for a report on the activities of the Special Delegation, there was an awkward pause. Ab was recalling the testimony the Special Delegation had given to Watkins's committee and contemplating whether it should be disclosed to Preston. Ab said Rex had testified that the reservation "embraces an area of 1,065,000 acres" and estimated "that there are 15 million board feet of timber, principally Ponderosa Pine, on the reservation, which is over 10 inches in diameter." "The bulk of the tribal lands," Rex explained, "are suitable only for grazing."[61]

This was important information, but Preston already knew about the tribal lands. Management of the commonly owned tribal resources was included in the plan, but how had Watkins reacted to the proposals of the planning board for continued federal supervision? Preston wondered.

Ab explained that Russel Cuch testified that the Utes had already formulated a plan. Ab did not tell Preston that the Special Delegation had testified in support of a bill, at least not directly. But Ab seemed to be talking about something else. And why was he gazing out the window, avoiding eye contact with Preston? Preston wanted to know if Watkins had approved the long-range program proposed by the planning board he had chaired.

Preston gradually realized that the Special Delegation had not presented the long-range plan, with its proposal for continued federal supervision, but had testified in support of a modification of that plan calling for cessation of federal supervision. There was another pause. Then Harris confirmed that the Special Delegation had met with a joint meeting of the Senate and House Subcommittees on Indian Affairs, chaired by Senator Watkins, on June 9, 1954, and that Watkins had already introduced a bill to terminate those Utes having less than 51 percent Indian ancestry.

The transcript of testimony by the Special Delegation reveals that Cuch said the "full-blood people are still really destitute. It is the truth." The record of his testimony shows that he also said, "While we are working out the long-range program, our people are going to need help badly to get through next winter. Therefore, if this bill passes, our people expect the Secretary to authorize a per-capita for immediate needs like grocery bills and water charges, and especially for family plans for economic and social improvements."[62]

Rex had told the committee that "the General Council, by a vote of 152 for and 8 against, voted to separate the assets of the Tribe between the mixed-blood group on the one hand and the full-blood group on the other hand" and that "they also directed that legislation permitting such a division be drafted and recommended its submission to Congress." The record shows that Watkins congratulated the Special Delegation before his committee because of the way it "permitted the freest discussion on the part of the members." "The preparation of the program that you now have is embodied in the legislation that I introduced here," Watkins had said.[63]

The generous statements about open discussions were true. The planning committee always allowed anyone to speak or make any proposal.

The look on Preston's face turned to shock, as Harris continued. Ab then revealed that he told the committee that the bill under consideration "expresses the wish of a majority of the Indians of the Uintah and Ouray Reservation." The transcript shows that he also said that "notices were posted in advance of the meetings," and that "we had pretty darn good attendance at all our meetings, and good participation in the discussions. If there were any questions concerning problems in this division, they were discussed until a complete understanding was had or until no more questions were raised, but they have a pretty good understanding of it, and they know what this is and what it means."

"Did a big majority of the full-blood Indians vote for this program?" Watkins asked.

"Yes, sir."

"Were there any dissents at all? Was there anyone who voted against it?"

"No, there wasn't."[64]

The Special Delegation circulated a memorandum acknowledging, "The Indian office and the Interior Department recommended that those persons of ½ Ute blood be included with the mixed-bloods," Harris revealed. "That change was entered into the bill and so introduced."[65]

Preston did not learn the details of the testimony by Ab and the Special Delegation for many years, but when he did he was incredulous. No such proposal had ever been discussed on the reservation, much less approved—and

certainly not without dissent. Even the proposal of Robert Bennett, Francis McKinley, and Rex Curry, advanced as "the Uncompahgre plan" at the community meetings and presented by the two lawyers at the General Council, would not affect any Indian who was 50 percent or more Indian. The change was of profound significance, for termination of those not at least 51 percent Indian would automatically exclude the children of any Ute who married outside of the tribe.

Only 152 of the 1,665 Utes had voted for the resolution to study the two lawyers' proposal anyway. The others had walked out in protest, or had withheld their approval, or not had an opportunity to express their wishes because of the lack of notice.[66] It seemed just like the meeting on the share-and-share-alike resolution.

Watkins was not misled by the 152–8 vote cited by Curry or the "unanimous" one claimed by Harris. He knew because of the letters he had received that the Utes had never "requested" termination. Watkins knew that the Utes had acted in response to his own threats. He had even acknowledged before the subcommittee,

> At the rate they are going now it will be 50 years before all the Indians or even two-thirds of them in most of these tribes will be willing to consent to withdraw.
>
> Even though they don't like it, if we decided, as the guardian, that the ward has now arrived at the stage where he can take care of his own affairs, who is to challenge that by saying that we have got to have the consent of the ward? Here we have a group of people who have innate ability just the same as other people, when they get stimulated with a little ambition and necessity. You know, this world, it is said, has been made better by dissatisfied people. If you get to the point where you are really dissatisfied, you do something about it.[67]

The Indian Rights Association, organized in 1882, sent Jonathan M. Steere, its president, to Watkins's earlier hearings on other termination bills from its headquarters in Philadelphia. Steere warned Watkins that his proposals were, plain and simple, a revival of the errors of the allotment era, detailed for Congress in the Meriam Report. But Watkins was still determined to go ahead with his plans.

"The way to get this job done is to bring it squarely to the attention of those people, that we are not going to keep on going."

"Well, we do have that striking example of what happened under the Dawes [general allotment] Act," Steere cautioned, "and that left a very strong lesson, it seems to me."

"How many years ago was it?" Watkins asked, and then answered his own question. "That was 66 years ago. If we have done any job at all, there should be great progress since then."

"The threat is that premature removal of restrictions and division into individual holdings will result in dissipation of their assets, leaving the Indians poverty stricken and dependent," Steere insisted. "With tribal property there is likely to develop strong pressure for dividing it into individual shares with restrictions on its sale removed. It seems urgently important that such drastic changes should be made only with the consent of the Indians involved, expressed through a referendum vote of the group."[68]

Now Ab Harris was looking right at Preston. His eyes were hard, like those of the dealer in one of the Indians' monte games, or the man at the trading post driving a bargain for a string of beads. Boyden told the Indian rights advocates that they had the problems solved, Harris explained, taking obvious pride in reciting what the tribal attorney had said. "We are not going to make the mistake that has been made at some times in the past and just say, 'you get 40, and you get 40,'" Boyden had declared. The transcript shows that Boyden laid out a plan in some detail:

> Our plan develops something like this. We will take a whole canyon and we know that that canyon is all grazing land. So we will organize a corporation under state law, a grazing corporation, and we will determine the carrying capacity and perhaps issue a share of stock for each cow that can be put on the range. . . . We know there [is] a whole group in Salt Lake and other places that will just want their interest [sold] out. We will canvass all those people. We also know that there are quite a few that have much more cattle than their interest will support. So those people have to arrange to buy out the other people that will want to sell. And we have that program worked out pretty much in detail as to the various steps that we will go through in order to accomplish this.[69]

Preston Allen heard the call of Coyote once more as he left the BIA offices that day.

The reason for Robert Bennett's visit to the Uintah Valley was now clear. He, Francis McKinley, and Rex Curry had simply bypassed the planning board

Preston chaired. Boyden had been formulating other plans that fit Watkins's demands—including policies the planning board had rejected. Watkins had now introduced their plans in Congress and represented them as being the proposals of the Utes.[70] Ab Harris had been a member of Preston's committee but had never mentioned that the committee had rejected Watkins's ideas. The planning board's recommendations for the ten-year plan had never even been discussed.[71]

Watkins, the BIA, and Boyden obviously knew, all too well, how to secure the appearance of "consent." Simply dangle the promise of a payment before the impoverished Utes, as they had done with the share-and-share-alike amendment, or as Brigham Young, the Honorable Felix Brunot, and Inspector McLaughlin had done, and the hapless Utes would appear to have agreed to anything.

Even Rex Curry's parents repudiated his representations to Congress. Rex's mother wrote to the secretary of the interior that "this subject was never acted on by the Tribe, no meetings was held, nor called by the Tribe. [The Special Delegation] had forgotten the Constitution and by laws of the Tribe."[72] Oran Curry also wrote to the secretary of the interior that termination was a "terrible policy."[73] Preston Allen thought it was a heavy indictment for an Indian's own parents to deny that what he said was true.

Arthur Watkins never responded to any of the hundreds of Utes, mixed-blood and full-blood, who protested the misrepresentations concerning the termination resolution.[74] Either he didn't care or, as Allen later felt, he was too busy chairing the historic McCarthy hearings, also in progress in the fall of 1954.

And that's how it happened that the Utes "requested" termination—or at least how the BIA told Congress, the courts, and the American public that they had. Honest Injun!

# 2

# LAYING THE SNARE (1955–56)

*Things are changing. Things were good like they used to be, but they are changed now and we must accept them. Time is getting close when we will be turned loose for good and the best we can do is try to save what we have left.*

*Albert Harris, Fort Duchesne District Meeting, December 1, 1953*

Because winter so often lingered into spring and even summer in the Uintah Valley, it was said that there were just two seasons: eight months of winter and four months of late fall.[1] And so after Preston Allen's traumatic meeting with Ab Harris, winter was ending, but cold still gripped his log cabin in the piñon forest at the base of the Uintah Mountains.

The slightly rotund mixed-blood Ute, now a leader of his Uintah band, contemplated the puzzle before him. The two iron pipes must somehow be joined. Yet as the threaded pipe coupling was turned clockwise to engage it, its attachment to the adjoining pipe was turned counterclockwise, disengaging it. Preston was completing an indoor plumbing system he had devised, modeled after those in the homes of non-Indians in the Uintah Valley. His task was to join it to the pipe coming from the shallow well drilled by the tribe to supply water for livestock, which he was converting to culinary use.

The pine logs of the cabin had been split with his own hands. He had gathered stones and assembled them into a fireplace. The log house was small compared to non-Indian homes, but its three rooms were large compared to those many Utes lived in. Indoor plumbing was a luxury few Utes could afford, but Preston would have it for Juanita, if the contrary pipes could somehow be joined.

Preston would not take his bride to one of the rude one- and two-room dirt-floored cabins and makeshift shacks available to Indians in the Uintah Valley before 1950. Such "houses" were often built of cardboard, refrigerator casings, or other scrap materials. Many Utes still lived in tents.[2] The poverty of the average Ute family before 1950 did not permit better; and until recently, Preston had been unable to afford a modern home like those of the non-Indians in Roosevelt, the principal city located at the center of the Uintah Valley.

Preston rummaged through the pile of pipe and fittings the man at the hardware store told him would be needed. There he found the solution: a device the man at the store called a union, fitted with reverse threads that permit the crucial joint to be made. Preston felt a little foolish for not remembering that a coupling like the union was necessary. Yet reservation Indians, whose sanitary facilities were often outdoor privies at best, and sometimes worse, did not work often with modern plumbing systems.[3]

After 1950, economic conditions among the Utes began to improve. About that time Francis McKinley graduated from George Washington University and returned to the reservation to lend the training and experience he had acquired in Washington, D.C., working for the Treasury Department to the business committee. The three-year program authorized by the August 21, 1951, amendment to the Ute jurisdiction act included a revolving loan fund that enabled the Utes, some for the first time, to be adequately nourished and clothed.[4] Subsidy programs provided approximately 91 percent of the Indian homes with electricity. Fifty-five water wells, such as the one at Preston Allen's ranch, were drilled.

In 1951 the average income of the Utes jumped to $1,525 per year. One thousand dollars of that amount represented the per capita payment received that year from the settlement of the Colorado Utes' claim, so the earned income of the average family was still under $1,000 per year. The per capita payment enabled the Utes to acquire automobiles, furniture, appliances, and other conveniences previously unavailable to many of them.[5]

There had been additional per capitas from the Colorado claim in succeeding years, averaging $4,135 per Indian. Most of the Utes used that unearned income as Preston was doing, to improve their living conditions. Surplus army shacks were acquired for many who were homeless and renovated into houses.

The Utes were at last moving into the twentieth century. Impressive as their advances had been, though, Preston knew that the basic character of the Utes and their economy was unchanged. There were still few jobs on the reservation. But for the money from the Colorado Utes' claim, their poverty was still shocking. The mortality rate among the Utes was still several times the

national average.[6] If living conditions had improved, it was an artificial prosperity, directly fueled by the Colorado judgment.

Having connected the pipes, Preston went to the fireplace, where the piñon logs hissed and spat under a porcelain pot. He poured the strong black brew into a metal cup, taking care to allow the coffee grounds to settle before sipping it.

Preston's appearance gave few clues to his Indian lineage. His full, rounded features conformed to the Indian stereotype, but his thinning hair and light complexion made his American Indian origins inconspicuous in any random gathering of Americans. His small stature and quiet manner further disguised his ethnic origins.

In style of dress, though, Preston Allen was unmistakably Indian. The western cut of his boots and clothing were typically country. His silver and turquoise jewelry was crafted by Indians of other reservations, but the distinctive peyote stitch beadwork of his belt and bolero left little doubt that he was Uintah.

In 1948, after he returned from service in the Burma campaign, Preston leased three forty-acre tracts from the Ute Indian tribe in the forest where he built the cabin.[7] The land had been the base for his 125 beef cattle.

The heat from the fireplace before him and the soothing warmth of the beverage were offset by the chilly recollection of events following the fateful confrontation with Ab Harris the previous June.

Following Ab Harris's and Rex Curry's duplicitous mission with the Special Delegation, Senator Watkins had been telling Congress and the public that the Utes had asked for termination. Protests to the contrary were ignored, and Congress enacted the Ute Termination Act on August 27, 1954, implementing the test of blood imposed by the BIA and Watkins. Those Utes who did not "possess one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half" would be declared no longer Indian. Only those qualified by a quantum of Indian blood in excess of 50 percent would remain as members of the tribe.[8]

The Ute Termination Act, unique among all termination acts affecting other Indians introduced in the same session of Congress, was essentially an experiment. The concept of blood was originally injected by the BIA under the Indian Reorganization Act in an attempt to define who was an Indian. That concept was now seized on as a means of eliminating the so-called Indian problem altogether.

Watkins believed that if the 51 percent formula imposed in the Ute bill was substituted for the quarter degree of ancestry the IRA corporation prescribed for membership, over time the identifiable Indian population would simply

disappear. As Indians intermarried with non-Indians, or even with other Indians of mixed extraction, they would fail to meet the definition of 50 percent Ute and 51 percent Indian and be absorbed into the non-Indian population—into the "main stream of American life," as Watkins was fond of saying.

That result seemed altogether laudable to Watkins, consistent with the melting pot concept of American society then in vogue. More important, at least to Watkins, it would relieve the United States of the burden of administering rights secured to Indians by ancient statutes and antiquated treaties.[9] The dispute that already existed in the Uintah Valley, with respect to the share-and-share-alike amendment and the Uncompahgre plan, was defined along blood lines. That presented a convenient justification for using the mixed-blood Uintahs for the social experiment necessary to prove if the idea would work.

Watkins thus translated McKinley's efforts to advance the Uncompahgre plan into a "request" for termination—by the mixed-blood Uintahs, of whom McKinley was not even a member. After Watkins caused the essentials of that plan to be enacted into law, it was clear that, like it or not, the mixed-blood Uintahs would be cut off from the special relationship they had formerly enjoyed with the United States. That would not occur for six more years, though, when the secretary of the interior would publish a proclamation declaring the mixed-bloods no longer Indians. The BIA would continue as guardian of the mixed-bloods until August 27, 1961, and as trustee of their property, or in control of its disposition under the requirement of secretarial approval of any sale, for another three years, until August 27, 1964. At that time a second proclamation would be published by the secretary of the interior declaring the trust protection of the mixed-bloods' property ended.[10]

While Preston Allen was contemplating these matters at his chilly cabin at the base of the Uintah Mountains, on the far side of the reservation Francis McKinley was responding to criticism from Chief John Pawwinnee and the Uncompahgre band. McKinley, like many with a little book learning but not sufficient experience to deal with it, had been contemptuous of the respected elders and the Ute way. "The council of elders was composed of broken-down old men, sincere but anachronistic, trying to perpetuate an out-moded form of tribal government in a modern world," McKinley accused. "They are guilty of negligence, stupidity, and mistakes time cannot erase." "I am a full-blooded Ute Indian and I understand my people better than they understand themselves,"[11] he exclaimed.

McKinley had been criticized for his role in the adoption of the Termination Act. The Uncompahgres found that they were also harmed, in some respects as much as the mixed-blood Uintahs. The 51 percent test for continued

tribal membership amounted to a penalty on marriage. The children of any Uncompahgre who married outside of the tribe would fail to meet the 51 percent test and would be disinherited.

That was evident in the case of Julius Murray, the Uintah representative on the tribal council who moved the adoption of the share-and-share-alike resolution in 1950 and a study of the termination resolution at the General Council meeting in 1954. Julius thought he would remain a member of the tribe, for he was 50 percent Ute; but when the definition was changed by the BIA and the Special Delegation to require an additional degree of Indian ancestry, Julius found himself in the mixed-blood group. His children would be classified as full-bloods, however, for their mother was three-fourths Ute. In short, Murray's family was in the tribe, but he was out. After termination children such as Julius Murray's would not qualify for either group, however, for the Termination Act provided that mixed-blood ancestry would no longer be counted.[12]

Julius, one of the more experienced Utes on the Tribal Business Committee, would be lost to the tribe in the 1960s and for all time. Loss of his experience would disrupt the economy of the full-bloods and management of their assets. Elimination of 27 percent, more or less, of the tribal range and other assets that would go to the mixed-bloods would disrupt the Indians' communal property system. Moreover, the act provided that the full-bloods were also to be terminated, presumably at the end of the ten-year "preparation" period.[13]

When they became aware of those effects, some two hundred of the Uncompahgres signed petitions denying that they, or any Utes, had approved the termination resolution. The petitions were sent to the superintendent, the commissioner of Indian affairs, and Senator Watkins, charging that Francis McKinley, Rex Curry, and John Boyden were "not representing us and managing our affairs" and "should resign their offices."[14]

"I'm of the opinion there is a lot of passing the buck," Art Workman charged in a letter to Commissioner Emmons in January 1955.

> And I think this passing the buck is being done in that office at Fort Duchesne.
>
> That bunch . . . are always telling us what we could or could not do, and always keep the mixed-bloods riled up. . . . [T]hey spend money like drunken sailors and I can't see where it is going to do either the full-bloods or the mixed-bloods any good.
>
> I was told in one of the meetings that if I didn't like what was going on and didn't like the way things were being handled I could get out.[15]

Pawwinnee read a proposed resolution at the meeting of the Uncompahgres on April 29, 1955. The prepared text charged that "the recommendations for the proposed legislation and representations made by the delegation of Utes allegedly representing the Ute Indians resulted in enactment of the termination act." McKinley knew Workman's accusations and Pawwinnee's proposed resolution were directed at him, for the "recommendations" referred to were the plans he, Rex Curry, and Robert Bennett had substituted for the recommendations of the planning board the year before.

Pawwinnee's proposed resolution further stated,

> The United States Government and Members of Congress now claim that the termination act was enacted because of the request and petition made by the Ute Indians and not through any specific recommendations, influence and pressure.
>
> . . . . The Uncompahgre Band merely proposed that accounting, justification, and adjustments be made in regard to the expenditure of all tribal funds, . . . and that after adjustments between the various groups that all funds be divided on the basis of rights, interests and ownership; and that all future income be handled in the same way, so that each group would equitably share in what was due it. The truth is that delegates chosen by the Uncompahgre and Uintah Bands were refused recognition and were not allowed to represent these two Bands. Instead, the Tribal Business Committee chose the delegates to represent the two bands. We were under the impression that the draft copy of the proposals tentatively made in the series of meetings had been sent to the tribal attorney for correction of language, legality of certain stipulations, and such, before being presented to the full committee.[16]

Chief Pawwinnee and the others at the meeting agreed that the proposals sent to John Boyden were to have been "discussed and argued pro and con, and also to give opportunity for the representatives of the various groups to contribute their ideas."[17]

McKinley, who attended the meeting, may have realized that he had been used when he cooperated with Robert Bennett in advancing Watkins's termination plans. He had proposed to terminate those not 50 percent Indian as a means to accomplish the goal of eliminating the mixed-blood Uintahs, thereby giving the Uncompahgres a larger share of the $32 million.[18] Whether he recognized the error of his participation with the Special Delegation or not, he joined with Pawwinnee in adopting the resolution that "the purported

agreements to share and share alike in all funds, property and income" were the source of the problems. McKinley also joined in resolving that the termination resolution was "entered into hastily without adequate study and deliberation, at the prompting and high pressuring tactics of tribal attorneys" and without "any special consent and authorization by the individual groups affected" or "complete understanding and comprehension of what rights and interests were being involved."[19] The Uncompahgre meeting brought the number of Uncompahgres who protested the termination resolution and its improper presentation to Congress to more than three hundred, including all of the Uncompahgre leaders and Francis McKinley himself.

While the Uncompahgre meeting was concluding, Preston Allen was still contemplating what he could do to help his people. However much he felt that his work as chairman of the planning board had been ignored, it was hard to judge Ab Harris, Francis McKinley, and Rex Curry too harshly. They had yielded to pressure from Senator Watkins and probably believed that they were acting in the best interest of the Utes, even if the planning board thought otherwise.

They knew, for example, that in 1952 Watkins and the BIA had held up payment of $9.5 million that the United States owed the Menominee Indians of Wisconsin. The Menominees were told that their proposals for using the money were "incomplete," and Watkins continued to refuse them their money until 1954 when they reluctantly agreed to be terminated.[20] The letter Watkins sent to Curry in May 1954 was a plain declaration that he would refuse the Utes their $32 million, as he had done with the Menominees, unless they agreed to termination.[21]

Watkins treated the Utes like children who must be shown the proper way. Ab Harris, Francis McKinley, and Rex Curry may have thought they were protecting the Utes from the consequences of their own foolishness in trying to go against Watkins's wishes. They probably felt they had no choice but to ignore the recommendations of the planning board.[22]

Anyway, no one could see the future; Harris, McKinley, and Curry might be right and the planning board wrong. At least Preston was willing to give them the benefit of the doubt. So when it was proposed on September 14, 1954, that there should be a new "mixed-blood planning board," in the pattern of the earlier community and tribal planning boards, with Ab Harris as chairman, Preston accepted appointment as vice-chairman. He might be better able to prevent another betrayal, like that of the Special Delegation, if he worked with Ab Harris.

Preston knew, moreover, that the Uintahs must learn to cope with the new status being imposed on them. It would be important that they use wisely the

remaining six years of continued federal supervision. If there must be a termination program, it seemed better to serve on the planning board and try to make the best of it.[23] They must learn to manage property as individuals, rather than as a group, and deal with the practices of another way of life—like the plumbing fixtures that had been puzzling him.

The mixed-blood planning board had met a few times. However, before they could study the provisions of the Termination Act and make any plans, Boyden and Harris announced on April 28, 1955, that they had already prepared a proposal that they would present to BIA officials in the Phoenix Area Office for approval as the official mixed-blood plan.[24]

The fact was that no one—not the mixed-blood planning board, not Boyden, and not Harris—had authority to speak for the mixed-bloods at that time. Membership of the mixed-blood group was not even determined yet. There could be no such authority for the additional reason that the Termination Act required that the mixed-bloods be represented by an "authorized representative" designated under a "constitution and bylaws . . . ratified by a majority vote of the adult mixed-blood members of the tribe at a special election authorized and called by the Secretary [of Interior]."[25] There had been no call by the secretary of interior, no special election, no adoption of a constitution and bylaws.

Preston could see that again Boyden and the BIA were merely going through the motions of getting the consent of the mixed-bloods. They were using the mixed-blood planning board to lend an appearance of validity to plans they had already made. Boyden in fact told Watkins's subcommittee in 1954 that they had already made plans, but in the very nature of things these plans could not be approved by the people.[26]

Boyden used economic pressures to get the planning board to go along. He told them there would be no more per capita payments until the termination plans were completed.[27] Many Utes were willing to be terminated, if that was necessary to get the money; but it was incorrect to say that they *wanted* to be terminated. Those who made that claim were either insincere or badly misinformed.

Preston resolved that he must act more forcefully in his leadership responsibilities. It was important to correct the notion that the mixed-blood Uintahs had requested termination. It was crucial that they have some meaningful voice in the plans being made for their future. It was also important, now that they must accept a share of the Colorado Utes' money for their lands, that the remaining approximately $10,000 per Indian be used wisely.[28]

Tossing the dregs from his cup into the fireplace, Preston concluded that he was the logical person to lead. Having been chairman of the planning board for the entire tribe and now vice-chairman of the unofficial mixed-blood planning board, he was as knowledgeable as anyone concerning what had actually happened.

On April 30, 1955, as the snows were melting at his cabin in the piñon forest, Preston attended a joint meeting of the Uintah and White River Utes at the Whiterocks community.[29] There he learned that others shared his fears and frustration over the termination policy.

"The people are in an awful mess since the passage of the termination bill of Senator Watkins," Bill Reed, a Uintah representative on the tribal council, declared. "These emergency payments for the people for subsistence and purchasing of seed for the spring planting have been taken from them for debts and they have nothing left to farm with or live on during this period of waiting for the publication of the final roll."[30]

"I can assure you that although a Ute Planning Committee was and is supposed to have helped write this program, they had little part in it, except to sign when the program was presented to them," Liz Bumgarner explained.[31] Liz had been a member of the central planning board and Preston was relieved by her explanation, just in case Bill Reed was suggesting that the planning board was at fault.

"Washington and Phoenix write plans for the Indian people without regard to actual conditions," Preston added in support of Liz.[32]

Old Jim Atwine, the respected elder of the Uintah band, had engaged Clyde S. Johnson to look into the matter. "Your representatives who went to Washington, D.C., have gotten you into this trouble," the attorney wrote in a letter Atwine read. Those at the meeting recognized that Atwine's attorney was talking about the Special Delegation. "You should call the Superintendent and all the employees into the General Council meeting and either request them to resign or request a continuance of the program."[33]

The Whiterocks meeting concluded, as the Uncompahgre meeting had done two days earlier, with a resolution to take a firm position against the factionalism being exploited on the reservation, the "pitting of Uncompahgre against White River, White River against Uncompahgre, Uintah against Uncompahgre and Uncompahgre against Uintah, White River against Uintah and Uintah against White River."[34]

A few days later, on May 4, 1955, Preston Allen was seated in the long council hall at Fort Duchesne, listening intently as Liz Bumgarner rose to read to the General Council meeting a statement she and other Uintahs had prepared:

"My Indian people and Indian friends, both mixed-bloods and full-bloods: I hereby move this general meeting of the members of the Ute Tribe that the services of Francis McKinley and Rex Curry, as and from this date, and from henceforth, be terminated and that each of them be released as employees of the Ute Tribe in any manner, form or capacity. In plain words, I hereby move that Francis McKinley and Rex Curry be fired and that none of them be hired or placed on the payroll of the Ute Tribe."[35]

Preston hoped that this forceful joint resolution would correct the problems, for Bennett had urged them at the community meetings to "suggest changes if they felt that there were changes to be made" and to "become more active in trying to work with their officials, with their leaders and committeemen, so that a program which would meet the needs of everybody could be shaped up."[36] Bennett was urging them to be more active in supporting the Uncompahgre plan that he and McKinley were pushing for and in opposing the recommendations of the planning board; but surely they could decide for themselves what they would support. With Curry's sister joining in the opposition, it would be impossible to ignore the resolution—for Bennett was seated right there at the meeting.[37]

Liz continued,

> Mr. Francis McKinley, Mr. Rex Curry and others have made several trips to Washington, and it was through representations made by Mr. McKinley and Mr. Curry that this unfair, incompetent program was imposed upon the Indians. It was from Rex Curry and Francis McKinley that Senator Watkins obtained information from which he wrote the "Ute Bills" and advised the United States Senate that the Ute Indian Tribe was ready for the white man's way of life.
>
> Francis McKinley and Rex Curry should have known and must have known that these so-called agreements were hastily entered into without adequate study and deliberation. . . .
>
> Mr. Curry, Mr. McKinley, and all other representatives of the Ute Tribe were either incompetent and unreliable at the time the so-called hasty agreements were entered into, or they are dishonest, incompetent, unreliable and insincere at this time.[38]

*Hou*! *Hou*! The council hall fairly reverberated with exclamations of approval. The General Council resolved unanimously in the presence of Bennett "that a senatorial investigation be made as soon as possible here on the Reservation."[39]

As the Utes filed out of the council hall, Preston Allen sensed relief. No longer would the BIA be able to claim that mixed-blood Uintahs or any Utes had "requested" termination. No longer would they be able to claim that the plans advanced by Francis McKinley, Rex Curry, or John Boyden were the desire of the Utes, even the Uncompahgres. Or so he thought.

Before the end of May 1955, Francis McKinley either had another change of heart or demonstrated that he was insincere when he joined Pawwinnee and the Uncompahgres in condemning the Termination Act and the Special Delegation. He was again meeting with Robert Bennett at the offices of the superintendent at Fort Duchesne, and they were again making decisions that disregarded the wishes of the three bands and the General Council.

McKinley was praised for his "courageous" and "magnificent" efforts, even "in face of bitter opposition and dissension within your own group."[40] The entire Uncompahgre plan and the BIA program on which it was based might have been jeopardized but for McKinley's action.

The Termination Act that the Special Delegation had presented to Congress the preceding August provided that the tribe, representing the full-bloods, must submit a "long range development program" by November 24, 1954, for their own eventual termination.[41] Superintendent Gilmore formed a full-blood planning group composed of representatives of the five separate Indian communities and instructed the members to "pay close attention to recent Congressional policy on Indians and take into consideration the policies of the Indian Bureau," both of which contemplated speedy termination. The full-blood planning committee declined at first to adopt the proposed long-range program. Their position—and that of the Uintah delegates in particular—was that the proposals already approved by Preston Allen's tribal planning committee calling for continued government trusteeship over their lands and preservation of the Indian way of life should be adopted.[42]

They "were running into unexpected trouble from a minority within the Uintah Band," the plan eventually adopted by the full-bloods acknowledged. However, they "hoped that the official stamp of approval given by the Commissioner of Indian Affairs on the proposed plan might weigh heavily in unifying the full-blood people so that they would act intelligently in consideration of the program."[43]

Bennett and McKinley both knew that the full-blood group had rejected the long-range program and that McKinley had been censured at the recent General Council. Bennett nevertheless ignored the resolutions and reanointed McKinley "the recognized spokesman and leader [with] the confidence of the full-bloods."[44] The opposition that had developed merely necessitated a "selling

job." Bennett and McKinley determined to get the necessary "approval from the full-blood people on the program committee" and to disregard the General Council's resolutions.[45]

McKinley, Bennett, and Superintendent Gilmore believed that the opposition they were facing resulted from not having enough full-bloods capable of explaining the program. Bennett therefore selected certain members—including McKinley, despite the General Council's censure of him—and tutored them in how to sell the program over the determined opposition of the full-bloods.[46]

Bennett and McKinley arranged for a meeting with the Uncompahgres. When they arrived at Ouray on May 23, 1955, accompanied by Carl Cornelius, program officer for the BIA, the Uncompahgres listened. Bennett and McKinley reported that "approval of the program was unanimous with 64 for and none against." Their report ignored the more than 300 who had already signed petitions opposing the plan. If any followed the Ute tradition and registered dissent by silence, Bennett and McKinley did not report it. McKinley's proposals, rather than the resolutions of the planning boards or the resolutions Pawwinnee and the Uncompahgre band adopted, were thereafter presented as the official program of the full-bloods.

Then one afternoon in September 1955, as Preston Allen was looking after a sick calf, Art Workman came down the dusty dirt road lined with elm trees from the Nebeker Store at Fort Duchesne to deliver some turpentine. Art had been to Ab Harris's office at Fort Duchesne, where he had seen a letter from W. Barton Greenwood, acting commissioner of Indian affairs, dated August 5, 1955, addressed to the "Chairman" of the "Mixed-blood Group." The letter referred to a "visit to this office" by the unnamed "Chairman" and commented on a "plan" prepared under the termination law.[47]

The calf's mother licked her ailing offspring with soothing strokes. Leaning against the rail fence, amid the splendor of the splashes of crimson and yellow on the Uintah Mountains, the two men tried to make sense of the letter. Preston knew of no visit to Washington by anyone representing the mixed-bloods. There was no "chairman" of the mixed-bloods. The rolls had not been published, so there was no "mixed-blood group" to elect a "chairman." There were no "constitution and bylaws."

Yet someone claiming to be their representative had clearly visited the acting commissioner's office in Washington. Rex Curry, Ab Harris, and Francis McKinley claimed that their plans had already been approved. Could the acting commissioner of Indian affairs have simply conferred the chairmanship on Ab Harris? It had happened before: Bennett had designated McKinley leader of the Uncompahgres, and Brunot had declared Ouray "chief" at Los Pinos.[48]

Art Workman proposed another explanation: someone had probably represented himself as chairman of the mixed-blood group. They both knew that Curry, Harris, and McKinley had visited Washington recently.[49]

Preston and Art traced the grim pattern. Getting plans approved by bypassing the people seemed to be standard procedure. It seemed that Boyden, Curry, or Harris—or someone—had bypassed the mixed-blood group again and that the BIA in Washington had approved their plans in advance. If the pattern of the past was any guide, the advocates of termination could be expected to use that prior approval as leverage to force the mixed-blood Uintahs to accept their plans.

As the fall of 1955 passed and the snows began to fall, Preston Allen realized that the resolution of the General Council in May was being ignored. Either it had not been transmitted to the commissioner of Indian affairs or he paid no attention to it. Officials in Washington continued to treat Rex Curry and Francis McKinley as spokesmen for the entire tribe and Ab Harris and Rex Curry as spokesmen for all the mixed-bloods.

Preston was not ready to give up, at least not yet. The following spring, as the late snows melted and green leaves appeared on the trees along the Uintah River, he remained hopeful that strong, effective leadership would solve the problems.

At forty-three, Preston may have been a bit young for the leadership roles he had in mind, compared with the respected elders who traditionally led the Uintahs, but as a veteran of World War II he had acquired experience that he thought invaluable. He had been involved in little actual combat, except for those times when the enemy broke through the front lines in Burma and his quartermaster detachment was called up to plug the breach.[50] Service as a cook in a quartermaster detachment may not sound impressive, but it had involved him in administrative responsibilities, and that seemed relevant to the issues at hand. Moreover, his entire adult life, aside from his years in the military, had been spent operating a herd of beef cattle. That also seemed valuable, for the assets of the tribe included rangelands he was familiar with. Most important, though, Preston had earned the confidence and respect of his people, confirmed when he was made chairman of the tribal planning board and, more recently, vice-chairman of the unofficial mixed-blood planning board.[51]

If his country's old wartime commander, President Eisenhower, was determined to embark on what Watkins said would be a new beginning in Indian affairs, Preston was willing to help make their programs work. But in the spring of 1956, Preston had no way of knowing just how critical the next two years would be for the mixed-blood Uintahs. There was simply no way for Preston to

realize that he, rather than those whose policies he was trying to correct, would thereafter be cast as the architect of the plans Boyden had prepared.

On April 5, 1956, the final roll of mixed-bloods was published by the commissioner of Indian affairs and a call was issued for election of the "authorized representative" by "the adult mixed-blood members of the Ute Tribe of Utah" by approving a constitution and bylaws of an organization called the Affiliated Ute Citizens of the State of Utah.[52] The constitution and bylaws had been composed by John Boyden, with the consent of the new superintendent, John O. Crow.

Preston decided that he should be a candidate for leadership in the new organization. If the BIA would not listen to the protests of Indians then sweeping the nation,[53] it might be better to try to make the system work, even though it had been devised for them by others. In that way Preston might be able to contribute to the welfare of the mixed-blood Uintahs.

"Now is the time to act," Preston, Art Workman, Bill Reed, and Elmer Hackford jointly urged in a campaign flyer circulated prior to the meeting, which was held on May 12, 1956. "Do you want to be sold short, or buy more of what you have been getting? We have mineral deposits, lands that have never been grazed or farmed and that have never been appraised. So, let's get men who can understand and plan for these things, qualified representatives who can deal with the full-blood group; government and state officials."[54] The result was the mandate Preston sought. The proposed constitution and bylaws were approved by a vote of 128 to 6. Preston, Bill, Elmer, Lula Murdock, and Liz Bumgarner were elected directors.

At the first meeting of the board of directors on June 7, 1956, Bill Reed failed to attend. The other four directors were administered the oath of office by Superintendent Crow. Liz Bumgarner was asked by Crow to serve as acting secretary and write a letter to Reed asking him to indicate his intentions and telling him that if he did not appear to be sworn in as a member of the board of directors his office would be declared vacant and a new director appointed. Preston was elected president by the remaining four directors. Pictures were taken, and the meeting adjourned.[55]

Bill Reed declined to appear, and Art Workman took his place. Preston Allen thus became, effectively, the successor to Soweitte, Old Tabby, and, more recently, Jim Atwine, as leader of the mixed-blood Uintahs. Almost immediately, John Boyden presented Preston with a formal contract designating himself attorney for the AUCU.[56]

It seemed to the directors, who were embarking on the division of a treasure trove of assets between themselves and the Ute tribe, that Boyden might

Superintendent Crow and AUCU Board of Directors. Photograph courtesy Preston Allen.

not look after the best interests of the mixed-bloods. Instead, he would be looking after the interests of the tribe. They tried to hire Clayton Simmons and John Beaslin, lawyers from Vernal, but Superintendent Crow told them Boyden's services would be invaluable to them.[57] He was already familiar with the law, since he had written it. He had been working for two years on plans to implement its provisions. It would be both expensive and time-consuming to engage another lawyer. A new lawyer would only duplicate Boyden's work.

How could Boyden be fair to the AUCU, Preston asked the attorney, if he was already obligated to look after the tribe?

"Well," Boyden replied, "let's not let this bother us. I will make an agreement that if there is ever a conflict I will step out, and you both can get another attorney; but as long as I am in there, there is not going to be any conflict."[58]

Superintendent Crow administering oath of office. Photograph courtesy Preston Allen.

Before the green leaves that had appeared along the Uintah River in the season of Preston Allen's optimism fell to the ground, on another river far away all reason for optimism was dashed. The river was the Potomac, and the old gray building on its banks, at 19th Street and Virginia Avenue in Washington, D.C., was dingy. The BIA was housed in an old War Department building, surplused when the huge Pentagon complex was built. The building was perhaps representative of the place Indian affairs occupied in the government of the United States and the minds of most Americans in 1956.

The wooden floors creaked as the group of some fifteen men filed in, all wearing white shirts, ties, and business suits of the style sold in the bargain section of any large department store. The room was nearly bare, except for the long wooden table and some olive-drab filing cabinets. The pen of the secretary

taking notes bounced over the deep scratches and gouges in the surface of the table. Adorning the walls were pictures of Indians in cheap ready-made frames.

The acting commissioner of Indian affairs, Barton Greenwood, and his top aides were discussing termination programs. They were concerned about the Klamaths of Oregon, the Wyandottes of Oklahoma, the Menominees of Wisconsin, the Catawbas of South Carolina, and the Poncas of Nebraska, among many groups that had been subjected to Senator Arthur Watkins's termination legislation, but this particular meeting was about the Utes of the Uintah and Ouray Reservation in Utah. For that reason, John Crow, superintendent of the agency at Fort Duchesne, and Frederick M. Haverland, area director from Phoenix, had been summoned to Washington.

"Are the Ute Indian Tribe and the Affiliated Ute Citizens two legal entities, and is Boyden representing both groups?" The question came from Louis R. Bruce, who would become commissioner of Indian affairs before the termination era ended and would eventually repudiate the policy as a "mistake."[59] Bruce, himself a Mohawk-Sioux, knew that the BIA's role in selecting legal counsel for Indians was criticized by Indians everywhere. They could recommend, but the BIA did the choosing. The Indians complained that the system created an incestuous relationship in which the BIA would not approve the appointment of lawyers who opposed its policies. That was why the same lawyer frequently ended up representing different tribes or bands of Indians. If the choice was not someone BIA officials favored, then the request was often lost in the bureaucratic shuffle, and Bruce wanted to guard against that in the situation under discussion.

Haverland affirmed that the two groups were jointly represented. Barton Greenwood and the others at the meeting contemplated the implications. Everyone knew that joint representation by Boyden presented a conflict of interest. It was stipulated in the contract Boyden had presented for BIA approval that "it is specifically understood that the Attorney also represents the Ute Indian Tribe" and that Boyden must take such action in relation to that conflict of interest as "may be required by the highest ethics of the legal profession and in good conscience."[60] Those words were put in the contract to shield both the BIA and the attorney from criticism, but Bruce knew that the conflict of interest was already present. The two groups were about to divide millions of dollars in cash and potentially billions of dollars in other assets.

"The groups should be independently advised. If there were separate attorneys there may be more reason to determine values," Bruce said, explaining that real property of enormous value must be divided and that separate attorneys were needed to be sure that the division was fair.[61]

Those at the table were more concerned about how much work—Boyden's—had already gone into the program. A new attorney for the mixed-bloods meant wasted time while he studied what had already been accomplished. There would also be time-consuming negotiations, for lawyers never seem to agree. They were under pressure from Senator Watkins to advance the termination programs as fast as possible.[62]

"Both groups have indicated their satisfaction with their attorney contracts," Haverland said. Superintendent Crow neglected to explain that he had actually refused the AUCU's request for separate counsel. "I don't believe there is any specific question on this matter, because Boyden is primarily employed as a consultant and not specifically to represent either group in any arbitration or settlement of disagreements," Haverland continued.

Seeing that Bruce was unconvinced, Haverland stated the real reason for his objection to separate counsel. "It would cost the groups a lot of money to contract with a new attorney who is not acquainted with the people, the reservation and the act."[63]

Bruce knew that time and expense could not justify the conflict of interest. He also knew that such a conflict was fundamentally wrong—universally condemned by both the ethics and the rules of the legal profession. The mixed-bloods, still under the protection of the "special relationship" with the United States, simply lacked the capacity to authorize such a conflict.

Bruce and everyone else in the room knew the Termination Act provided that "choice of counsel" was "subject to the approval of the Secretary of Interior until Federal supervision . . . is terminated."[64] The provision was born of well-intended federal paternalism and the knowledge, by then familiar, that Indians may be more easily imposed on by unscrupulous attorneys than could Americans in general. Bruce also knew that if the choice of counsel was compromised, merely to save time and money, the justification for BIA approval to protect the Indians from improvidence would be turned against them and approval would become a mere device to control the Indians. Even those of limited ability could choose their legal representatives for better reasons than those. Moreover, if the architects of termination really believed that the mixed-blood Utes were able to manage their own affairs, why insert such a provision in the law? Why not permit them to select their own counsel? If they did not have that ability, the purpose of the act was what its critics said it was—to get rid of the Indians, pure and simple.

Bruce was troubled by those thoughts and by the knowledge that the BIA would be subject to valid criticism if an attorney was forced on the mixed-

bloods whose loyalty was already compromised, whether in favor of the BIA or the full-blood group.

"Both groups should be independently advised," Bruce said.

"There is nothing in the act which would probably involve litigation between the two groups," Superintendent Crow replied.[65]

The acting commissioner had authority to settle the matter, but Greenwood said nothing. David Bruce did not press the point, and discussion moved on to other matters. With that, organization of the AUCU was complete. Preston Allen would be president and would have John Boyden for his attorney, like it or not. The meeting adjourned with no action taken on Preston's request for independent counsel. Indeed, that request was never mentioned at the meeting.

# 3

# BAITING THE TRAP (1956–57)

*American citizens, including public officials, generally don't know what the Indian issues really are. The issues are not assimilation, or integration, or emancipation, or government control over the Indian person, or civil rights in the usual sense of the words.*

*The real issues are continuing ownership of land; . . . adequate federal assistance in reservation development toward the end [that] our communities may thrive and contribute to the prosperity of the fine state in which we are located; an end to bureaucratic dictatorship and unnecessary federal regulations; an end to wasteful and constantly changing, insensitive administration of our affairs in favor of a constant policy of minimum interference and maximum assistance to us to help ourselves.*

*Clarence Wesley, Vice President, National Congress of American Indians, June 23, 1956*

The log house on the Indian land Preston Allen leased from the Ute Indian tribe at the base of the Uintah Mountains was completed. Preston and his bride, Juanita, made their new home there. Life for them in the piñon forest might have been altogether peaceful were not they, like the other mixed-blood Uintahs, apprehensive about what the new termination policy would mean for their future.

As he went about his morning chores in the bright sunlight of June 1956, Preston Allen was troubled that every effort of his or of any mixed-blood Uintah to set his or her own course under the new policy met with rejection.

The mixed-blood Uintahs seemed to be herded, like his cows, to a fate predetermined by others.

The joints of Preston's ungloved fingers tingled with pain as he strained to lift a heavy, wire-tied bale of hay. Once removed, the bale exposed a colony of field mice established during the past winter. The defenseless creatures scurried for cover, as Preston witnessed the family efficiently dispatched by the barnyard dog.

The manger where Preston's crossbred beef cattle fed, behind the neatly maintained rail fences of his corrals, was soon filled. The animals, being fattened for slaughter, butted at one another until each had taken its proper place established by the herd's social order. Their predetermined ration placed before them, Preston walked back to the ranch house with his distinctively purposeful, shuffling gait. His walk conveyed propriety and authority. A forest chipmunk peered at him quizzically from its perch on a limb, its pin-striped coat suggesting he was dressed for a formal party that somehow never happened.

Preston, Elmer Hackford, and the mixed-blood Uintahs engaged in the livestock business wanted to receive individual ownership of their share of the range.[1] The tribal range was large enough that if divided on a pro-rata basis, each man, woman, and child would be entitled to more than three hundred acres. Most families could take thousands of acres, a range large enough to be operated economically.

The proposal seemed sensible to them, but John Boyden said it would not be possible to divide the land fairly. Nor would the BIA consider a drawing like that used by the homesteaders in 1905 when the Uintah Valley was opened to non-Indians. The Indians were unaware that Boyden really objected because a land drawing would be contrary to the business corporation experiment that he and the Special Delegation had assured Senator Watkins's subcommittee would be part of the plan during the 1954 hearings. So the members of the board continued to plan for a land drawing, but the planning process was disrupted by pressures to act with haste in an atmosphere of coercion and threats.

Superintendent Crow stated at the first meeting of the board that the proposed program for the mixed-blood group was one of the first matters they should address. The board was required by the termination, act to formulate two separate plans: first, a plan for dividing the assets between themselves and the full-bloods, represented by the tribe; second, a plan defining how shares would be distributed to individual mixed-bloods.

Crow advised the board members that they were "not [to] antagonize or stir up the full-bloods." Bill Reed, the elected AUCU director who declined to

appear to take his oath of office, had persistently protested to officials in Washington that Curry, McKinley, and Boyden were not the mixed-bloods' representatives and should be fired. He was then told by the superintendent that he was not to attend any more meetings of the Uintahs and that he must leave the reservation.[2] This had undoubtedly accounted for Reed's failure to accept the office of director. His absence nevertheless disrupted AUCU operations from the very beginning and deprived them of one of their trusted and experienced leaders, for he had represented the Uintah band on the Tribal Business Committee for more than twenty years.

As Elmer Hackford talked with Sidney Atwine, a Uintah full-blood who was the grandson of Old Jim Atwine and Elmer's cousin, on the streets of Roosevelt, he was similarly threatened by Boyden: "Elmer, if you keep stirring up these full-bloods I'm going to have you chased off this reservation."

"John, I don't think you're a big enough man to do that, and if you think you can, just go ahead and try," Elmer replied.

"Well," Boyden continued, "the superintendent can do that; and if you keep talking to these full-bloods, that's what I will have him do."[3]

The board members got the message. They knew what Boyden and the superintendent meant about stirring up the full-bloods and why Bill Reed declined to attend their meetings.

On July 14, 1956, Preston sat at the head table in the meeting hall at Fort Duchesne. He was, presumably, presiding at the second general meeting of AUCU members. The superintendent and Boyden had insisted on this special meeting so members could approve the budget for AUCU's first year of operations. The board could not even start on their many complex tasks, the two advisers said, until the budget was approved.

In actuality, Preston watched helplessly as the meeting passed out of his control as soon as the budget was approved. Boyden stepped to the front of the hall and announced that the meeting would be an appropriate time to ratify a plan he had brought with him. As he reassuringly explained its contents, he distributed copies of a lengthy document, "Plan for Distribution of the Assets of the Individual Mixed-Blood Members."[4]

Preston saw his name on the cover as vice-chairman of the mixed-blood planning board. He recognized it as the plan that Boyden had taken to Phoenix to discuss with the area director and other BIA officials following the April 28, 1955, meeting of the planning board.[5] He thought it must be the same plan that the commissioner of Indian affairs had referred to in the letter Art Workman had seen on Ab Harris's desk in August 1955—the plan that Boyden had told

Senator Watkins's subcommittee on June 9, 1954, had been "already worked out pretty much in detail."[6]

Preston felt a wave of nausea so strong that he feared the knot in his stomach might come up, right there before everyone. He realized that the General Council's resolution to censure Curry and McKinley and the "hasty agreements" adopted on May 4, 1955, had been ignored. The worst fears that he and Art Workman had felt on the afternoon of the sick calf had been realized.

Preston glanced at Art, who was slouched on a folding chair in the front row. He could tell that Art was also remembering the meeting at Whiterocks in April 1955, when the Uintahs concluded that the Special Delegation had exceeded its authority. Their attempt to shake Boyden, Curry, and McKinley had seemed like a victory, but now this victory had simply been canceled.

Boyden continued to talk, his voice persuasive and reassuring. The plan contained complex provisions about the proposed business corporations. Preston could not understand them until he had carefully studied them. Surely the members, many of whom were less experienced than he, understood them even less. The Utes had little experience with business corporations and could not make an informed choice on such matters. But the corporations were a detail. They were really voting for the per capita distribution of $4,500 assured them if they approved the plan. The economic plight of the average Ute was so desperate that they were willing to vote for anything if they were promised some money.[7] This was a tactic that had been used in the past, and certainly Boyden knew it.

Agreeing on how the assets were to be distributed among the mixed-bloods, when they had yet to be divided between the mixed-bloods and full-bloods and when the board could not even determine what the assets would be, seemed to be going about things backward. The Termination Act plainly provided that the plan for distribution of assets was to be adopted "*after* the adoption of a plan for the division of assets between the two groups."[8] Yet Boyden presented his plan for the use of corporations *before* any plan for the division of assets had been presented, much less adopted.

The BIA and the advisers it appointed for the Indians seemed to have perfected the process of having their plans approved by the commissioner of Indian affairs first; then, using this approval as leverage, they would persuade the Indians to accept their ideas and neutralize any opposition arising out of the Indians' preference for communal ownership. Opposition was dismissed as the ill-informed objections of a minority.[9] How could Preston oppose a plan that

bore his own name ? Boyden could humiliate him publicly, and Preston had no doubt that Boyden would.

Preston watched Art Workman casually swatting at the flies buzzing about his head in the sweltering heat. His manner implied that these summertime pests must be endured, even if not enjoyed.

Maybe they had to endure Boyden's presumption too, Preston thought, feeling immobilized by his confusion. It might be better to just go along. The commissioner had already approved the plan. Surely the commissioner, who was obligated by law to protect the Indians, would not approve the plan if it was not a good one. The BIA knew more about the termination program than the AUCU directors. Furthermore, the directors would have difficulty producing a different plan, for they had to rely on the expertise of Boyden and the BIA anyway.

Preston began to argue with himself, looking for positive elements. The plan did contain many complex provisions that only a lawyer could understand, for example, that corporations be formed "under the laws of the State of Utah" to hold each mixed-blood Uintah's interest in "unadjudicated or unliquidated claims against the United States, all income from oil, gas and mineral rights of every kind, and all other assets not susceptible to equitable and practical distribution." The plan provided that corporations would manage rangelands by "assessment of its stock to comply with the tax exemption provisions of law."[10] Preston did not understand what those words meant. Superintendent Crow had been correct when he told the board that it would be expensive and time-consuming for them to duplicate the work Boyden had already done. Perhaps they were lucky after all to have the tribal attorney draft such complex instruments for them. Preston silently relinquished even his internal opposition. When Boyden told him to call for a vote, Preston obeyed. The group approved the plan with no dissent.

The "Plan for Distribution of the Assets of the Individual Mixed-Blood Members of the Ute Indian Tribe, Uintah and Ouray Reservation, Utah," composed by Boyden and approved at the meeting, contained ten separate provisions. Section 1 declared that it was submitted pursuant to Section 13 of the termination act. Section 2 approved the constitution and bylaws of AUCU, to act as "authorized representative" of the mixed-blood members, and section 3 authorized employment of legal counsel, which was John Boyden. The provisions important to the work of AUCU were section 7, which provided that "a corporation [the Ute Distribution Corporation] be formed under the laws of the State of Utah to receive all income belonging to the mixed-blood group" from claims against the United States or from mineral leasing and that the

shares could be sold; and section 8, which provided that the remaining lands of the mixed-bloods would be transferred to two range corporations, one for cattle (the Rock Creek Cattle Corporation) and one for sheep (the Antelope Sheep Range Corporation). It was specifically provided that the shares could be "sold at the will of the holder thereof."

Section 6 provided that the area office of the BIA would furnish technical assistance for "classification of the various lands, [determination of] carrying capacities [for grazing livestock], or other basis for division between the groups," and section 9 provided for a per capita payment of $4,500, on approval of the plan by the secretary of the interior.

The plan concluded in section 10 with a pretentious show of statesmanship declaring that the mixed-blood Uintahs were "seeking to more effectively comply with the legal requirements of the United States Government and all political subdivisions to which we are, and are to become, subject, to more ably assume the new obligations in justice now to be required of us [and] encourage desirable and amicable relations with other citizens of our respective communities and to promote the general welfare of all."

The next month, in August 1956, Preston received a telephone call from the office of Assistant Commissioner Barton Greenwood in Washington. The message was that the per capita distribution, which had been the inducement for the Uintahs to ratify Boyden's plan for distribution, would not be approved until the two groups jointly entered into the other "plan" required by the Termination Act—the plan for division of assets.[11]

Boyden hastily called a meeting at his Salt Lake City offices. The entire board of directors attended, along with Superintendent Crow, Area Director Haverland, Assistant Area Director Harry Stevens, Rex Curry, and Francis McKinley. The BIA officials from the area office in Phoenix indicated that they had already agreed that the grazing range would be divided on a carrying capacity basis—according to what is known in the livestock business as an animal unit month, or AUM—an estimate of the amount of forage on the ground necessary to support one animal for one month.[12]

A period of intense discussion followed. Lula Murdock, whose family grazed livestock for their livelihood, insisted that the lands be divided "on a cash appraisal basis."

"Division of the range on an animal use unit basis will be best," the BIA officials insisted. "Cash appraisals would be very expensive and would take a greater length of time to accomplish."[13]

They were using the fiscal club again. The AUCU board was trapped. If they did not rubber-stamp the BIA's plan, it would look as if they were

preventing the mixed-bloods from getting the cash they needed to feed, clothe, and shelter themselves. If they insisted on appraisals, they would seem to be wasting money on things the BIA officials said were unnecessary. They had no money for appraisals anyway.

Otherwise, the proposal seemed reasonable enough, so Preston Allen and the board agreed. They had no choice. The BIA personnel had been designated their advisers in the plan for distribution, and they were accustomed to following the BIA's advice.

The mixed-blood Uintahs objected to the plan when they learned of it. "If any plan has been drawn, drafted or completed, the Indian people of these various bands have never seen it," sixty-one of them complained in a December 1956 letter to Commissioner Glenn L. Emmons. "Each time a plan is presented, the 'powers that be,' such as the Business Manager and those around him, dangle a payment to the Indians, and a promise of payment, to obtain the go-ahead." They also advised Emmons, "You will find a small minority, a very small minority, making plans for destruction of the Indian people."[14]

The Termination Act provided that the plans must be prepared by the "authorized representative of the mixed-bloods." "Authorized representative," as defined by the act, did not mean "legal representative." It surely did not mean Rex Curry or Francis McKinley, with whom Boyden had prepared these plans. The directors of AUCU were the "authorized representative," but they had been virtually ignored.

Boyden passed those objections off casually. "All of this was discussed before the law was passed by the groups themselves and was written into the law so that [division of the range according to carrying capacity] would be possible," the tribal attorney said.[15] But Preston knew that the only discussion that had taken place had not included the Indians whose future hung in the balance. He had been chairman of the tribal planning board.[16]

But what did it matter if the AUCU directors had been rushed into plans they neither understood nor wanted, as long as the plans were good ones? The physical division of assets was the important thing, and the AUCU board embarked on that important task. The plan for distribution could be changed if the need arose—at least that is what Preston, Elmer, Art, Lula, and Liz thought in the summer of 1956.

In the stifling heat of August, they labored in the little courtroom at the agency office, preparing their proposal for the division of assets between the two groups of mixed-bloods and full-bloods. It was an enormous task, for the assets consisted of over one million acres of land containing oil, natural gas, coal, oil shale, and exotic minerals, the extent of which had never been determined,

Preston Allen and Elizabeth Bumgarner conducting AUCU meeting. Photograph courtesy Preston Allen.

plus the grazing range that was the backbone of the reservation's economy. They must also divide millions of dollars in cash, equipment, buildings, and related property. They had no inventory other than the reports the BIA had compiled during 1953 when the termination idea was first proposed.

The months of labor produced a proposal for the range division that the AUCU board thought was fair and workable. Hill Creek was the rugged range along Hill and Willow creeks south of Ouray and east of the Green River,[17] added to the reservation during the reorganization period to compensate the Uncompahgres for the loss of their reservation. The total was 543,125 acres. Based on their own experience and the reports furnished by the BIA they calculated the number of cattle and sheep they could graze on it. They had also taken the approximately 590,000 acres of communally owned lands remaining in the Uintah Valley, north and west of the Green River, and made the same

calculations. In accordance with the Plan for Distribution imposed on them, they split both areas according to the relative numbers of mixed-bloods and full-bloods. They proposed taking for themselves the area from the Uintah River to Yellowstone Creek in the Uintah Valley and a relative portion of Hill Creek.[18]

BIA records disclose that even as the AUCU directors were laboring to prepare their own proposal, Superintendent Crow met with Haverland, Carl J. Cornelius, the program officer, and other BIA officials on October 23, 1956, and they had already decided what the property division should be.[19]

Then, on April 25, 1957, a cloud of dust rose from the road that cut across the parched meadowlands near the banks of the Uintah River like a huge serpent. At its head was Preston Allen's battered green pickup truck, racing down the unpaved secondary road leading to Fort Duchesne from U.S. Highway 40. Riding shotgun was portly thirty-nine-year-old Liz Bumgarner. The truck was in a race against the clock. They were already late for the meeting at the superintendent's office. The AUCU board and the Tribal Business Committee were meeting with John Boyden and the BIA.[20]

Preston and Liz spoke hardly a word. Their minds were on the task that awaited them. Today was the day that they believed the BIA officials would approve or disapprove the proposed division that the five AUCU directors had been laboring over since the previous August. The BIA officials evidently believed it was the day they would get the approval of the full-bloods for the division they had already agreed on on October 23, 1956.

The division was critical to all of the mixed-blood Uintahs, for most of them were financially dependent, directly or indirectly, on grazing livestock for their meager existence.[21] Preston's cattle, like those of many others, depended on the tribal range for summer forage, and he had to have access to areas that were close to his ranch. He could not afford to haul them to new range by truck.

Liz's hopes for her four children were pinned on her own father, Oran Curry. Reggie, now nineteen, was already working on the range with Oran. Craig, no doubt, would soon follow. The rangelands were the key to her children's future.

When Preston and Liz arrived at the agency offices, Elmer Hackford, Art Workman, and Lula Murdock were already seated around the long table. The members of the Tribal Business Committee were there to represent the full-bloods. Darrell Fleming, who had been appointed to replace Superintendent Crow ten days earlier, was there, along with Haverland and Boyden, who conducted the meeting. Haverland and Fleming were responsible to look after the interests of *both* groups, for the lands remained in trust with the United

States and the individual mixed-bloods remained under government supervision until August 27, 1961. Boyden, of course, was attorney for both groups.

Preston Allen presented the plan the AUCU directors had carefully worked out. "Evidently the full-bloods were told not to make any," Preston observed later, "because they never showed any. . . . All of a sudden the Area Director says, 'Well, Rock Creek is the one you get'—no further discussion."[22] They could not know that the division had been made by the BIA six months earlier.

Rock Creek was a mere 172,000 acres, representing 19.5 percent of the total range. The mixed-blood Uintahs were 27.16186 percent of the combined membership. When the AUCU directors demanded a proportionate share, Boyden, Fleming, and Haverland justified the discrepancy by stating that Rock Creek had better feed. This "plan" provided that the lands were to be divided according to AUMs, not according to acreage or cash value.[23]

Preston and the other AUCU directors felt betrayed. Fleming seemed unaware of former Superintendent Crow's instructions that the AUCU board should prepare their own proposal for a division. Even at the risk of disregarding the former superintendent's warning against antagonizing the full-bloods, they tried to take a position against the division. Preston announced that the AUCU directors would withdraw rather than accept the area director's proposal.

"All right," Haverland said, "if you don't do it, we will do it for you, and we will charge you extra for it."[24] If Preston and the AUCU board did not accept Haverland's proposed range division, the mixed-blood Uintahs would be charged for a new BIA appraisal or range survey.

Boyden apparently did nothing at all to advocate a more proportional decision or to urge consideration of the mixed-bloods' plan. Boyden's account of the meeting, recollected twenty years later, was quite different from Preston's: "The mixed-bloods had their representatives, and the Ute Tribe or the full-bloods had their representatives. . . . And I was present. They all sat around a large table and discussed it and reached agreement. . . . I don't believe we had any controversies that were serious at all. I remember none."[25]

Haverland, reporting to the commissioner of Indian affairs immediately after the meeting, recalled differently. He conceded that "the conference was not without differences of opinion." For example, he added in seeming agreement with Preston Allen that there was "one range unit [along the Uintah River] which both groups seemed to wish to retain." However, "these differences were overcome after careful thought and deliberation."[26] Haverland did not report Preston's threat to withdraw.

The AUCU board finally endorsed two maps of the reservation, countersigned by Fleming and Boyden, allotting Rock Creek to the mixed-bloods.

Bitterly, Preston Allen endorsed the document requesting the secretary of the interior to make the conveyances described.[27]

On October 23, 1957, the two groups met again to discuss the allocation of grazing rights for the coming year. Henry Cuch, Thomas G. Appah, Ouray McCook, and Jason Cuch, the Tribal Business Committee members, represented the tribe. Preston Allen, Elmer Hackford, Lula Murdock, Liz Bumgarner, and Art Workman represented AUCU. Also in attendance were Gail Wielang, Otto Weaver, Wayne Yargus of the BIA Land Operations Office; Joe V. Chiarella of the Phoenix area office; Morey Collins and Carthon R. Petrie of the Gallup area office; and Rex Curry and John Boyden.

It had become clear that there was not enough range. Some of the livestock operators in both groups were talking about selling more of their animals than usual, wintering fewer, and keeping their herds smaller the next spring. Before anyone even mentioned grazing rights, Boyden took control of the meeting and discussed the matter of the timber inventory in the Hill Creek area.

One of the BIA people asked, "Elmer, would you like to start off with any revisions or decisions you have come up with in your group?"

Elmer Hackford's craggy features were leathery from a lifetime of range living. In the prime of life at age thirty-five, he was lean and wiry from years in the herdsman's saddle. He was direct, in the way of one who has spent his lonely nights in sheep and cow camps dealing with the daily simplicity of nature.

"The only decision is that they wanted the timber on Hill Creek surveyed before they would talk," Elmer replied. Hill Creek would go to the tribe in the division. The question was whether the mixed-bloods should get an adjustment for the value of timber on the land.

"We made a statement at one time that we wanted our fair share," Art Workman elaborated. "As I get it, the timber in the northern part of the reservation was not considered. We were informed it is inaccessible. As far as we are concerned, Hill Creek area is not inaccessible. We want our share."[28]

"We have no comment at this time," replied Jason Cuch, chairman of the business committee. Boyden and the BIA officials did have a comment. They proposed that the timber be given to the full-bloods—basically eliminating any share for the mixed-bloods.

"Let it set as it is for now," Art objected again.

Boyden was still unwilling. "I am not in favor of having a thing that doesn't seem to have much possibility just stand out and cause a delay, where you just have timber that anyone thinks is timber. Probably it is needed on the land to hold the water back. Seems it would be best to have the full-bloods buy

it and wind it up so that we don't have that to worry about. There is a tendency where, when we don't have something we want, we say just sell it. Maybe we can't do that."[29]

The BIA officials picked up on Boyden's theme. The timber that, three years earlier, Rex Curry had told Congress consisted of 15 million board-feet more than 10 inches in diameter on 60,000 acres and was the principal asset of the reservation had suddenly become of limited value. Curry chimed in eagerly that a hunter "said it was so steep he couldn't bring the deer out, just carried the head."[30]

"You can't fly over it without spending more than you will get out of it," Boyden said. "Seems to me you must take an arbitrary proposition. I don't believe in spending $1,500 and coming back and finding you have $1,000 worth of timber there."

Liz Bumgarner had the future of her children to think about and would not accept Boyden's arbitrary settlement without any attempt at a fair division. Hill Creek, whatever its value, was part of their heritage. It had been given to the Utes to make amends for wrongs done to Chief Ouray. "I don't care about value," she said, focusing on the issue of procedure. "We have many people we must answer to. If we just tell them it is inaccessible they will be very angry."

"Main thing is to take care of these problems properly in the division," Preston agreed with Liz.

"I suppose with this group of technicians here you could arrive at this as quickly as you could with so many appraisals," Boyden persisted, half-threatening and half-coaxing.[31]

Not one of the BIA officials had ever seen the range, yet Boyden seemed confident that they could fix a value on nearly half a million acres. None was an appraiser.[32] They had divided it on an "index value."[33] Liz protested that when it came to determining the value of the timber on the mixed-blood Uintahs' lands, they had insisted on protecting the full-bloods with a formal appraisal in which "they counted every tree," requiring the mixed-bloods to pay their share of the costs of appraisal plus an assumed cost for harvesting the timber. Now that the issue was the value of timber on lands that would go to the tribe, Boyden insisted that they accept arbitrary estimates.

"I don't feel that we should make it so hard to hold out to the dollar and cents," Liz complained.

"We should consider it, even things that everyone thinks didn't have much value," Lula Murdock agreed.

All five AUCU directors joined in Liz's and Lula's protests, but Boyden and the BIA officials were now collaborating smoothly. "Let me ask you a

question," Boyden said, turning to one of the BIA men. "How much more is land like that worth by reason of having shrubbery on it?"

"Of no more value," the BIA man dutifully responded. "Timber will not hold water back better than grass or sagebrush. If we ever remove that timber, all we will be doing is to create a flood hazard."

"What you are saying is that we have timber of no value and if you remove it, it is even worse," summarized Boyden.

Preston Allen and the AUCU directors felt powerless to do anything, as Boyden, who had contracted with them to be their fiduciary and assist them through the difficult period of division of assets, blandly contradicted Rex Curry's statement to Congress about millions of board-feet of timber, turning it into "shrubbery."

"Let's take a few of you experts and take a piece of paper and let you write down what you think it is worth because it is my thought that we are dealing with something that doesn't amount to much anyway," Boyden pressed on.

"If you do that, then you will have nothing to divide," Art Workman pointed out, "because you have already divided on that basis." The land's value as grazing range had already been divided at the April 25, 1957, meeting. If the timbered property were declared "no value," then the result necessarily would be nil.

"If you can show us something in black and white and can prove to us that you have given us our fair share, we are willing to work with you," Art proposed hopelessly.

But Boyden ignored him as if he had never spoken. "How about passing slips out to you fellows. . . . I suggest we ask our experts here all to evaluate this land and then take the average or medium." After Boyden collected the slips from the BIA officials, he announced that the "evaluations" averaged 45 1/4 cents per acre and that the tribe should pay 27 percent of that amount, or 12 cents per acre, for title to the timber on Hill Creek.[34]

The AUCU directors were stunned, but there was nothing they could do. The BIA had the power to proceed without their approval. BIA records indicate that BIA officials, including Haverland, Crow, and Cornelius, had already agreed, on October 23, 1956, that "all the timber lies within the area that will be going to the full-bloods." "It was felt that the most logical solution to the division of timber would be for the full-bloods to purchase the mixed-bloods' share of the timber."[35]

Liz tried one more time. "We can't understand why they consider some areas as inaccessible." No one answered. Boyden went on to another subject.

Preston Allen offered a meek and belated response to Curry's claim about the deer hunter and there not being any timber: "Quite a few mixed-bloods were on the elk hunt down there and we were questioned as to where the land does have timber on it." Boyden also ignored Preston and called for a vote. Each director had protested what was taking place; but when they sat silently in the traditional Ute manner of expressing dissent, their vote was recorded as being *unanimously for* Boyden's proposal.

Boyden then turned to a discussion of the value of the timber on the rest of the mixed-blood Uintah lands. Boyden now insisted on a formal appraisal. As Liz had already observed, he now demanded a "count of every tree."

When the question was timber on the full-blood lands, Boyden said the tribe was doing the mixed-bloods a favor by taking "inaccessible" lands, so AUCU was required to give the tribe a discount. Now that the issue was timber on the mixed-blood lands, the tribe was still doing AUCU a favor, according to Boyden, because harvesting the timber would involve a cost. Since it was on mixed-blood lands, AUCU must pay extra to cover that cost.

"What about taking 10 percent off your share also?" Lula Murdock demanded. If the rationale was that harvesting the timber on Hill Creek would be more costly, then Lula seemed to have a point. No one answered. "Take Mr. Boyden, who is he working for?" Lula demanded.

Liz also protested, "No, that is not right." But Boyden simply directed Rex Curry to compute the discount. "I won't go and tell this to my people when it doesn't seem right," Liz objected. Her brother silently made the computation. "I am still not satisfied and will not sign a resolution until I understand it better."

"You will never get anything more fair than that," Boyden reassured her. Liz protested again, but she was ignored.[36] The AUCU directors objected to the division on thirteen separate occasions, and three of the five voted against it remaining silent, but Boyden declared that if they did not raise their hands to vote against, they would be recorded as voting in favor. And so all five directors were reported to have voted for the division.[37]

Boyden turned to discussion of other legal matters, including a suit he was handling for Preston Allen on voting rights, submitted a bill for legal fees for himself and for Ernest Wilkinson's firm, then declared that "he would prepare the resolution on the range division," and the meeting adjourned.

Seven months later, in May 1958, Superintendent Fleming reported to Haverland, "Throughout my tenure . . . there has existed the group among the mixed-bloods who did not favor Public Law 671. . . . [T]heir influence was

brought to bear on the Tribal officials during the range division in June 1957, the preliminary meetings in December 1957, and the final meetings in January 1958." He neglected to mention that these dissidents were the AUCU's elected representatives and finished his report triumphantly: "In spite of this influence, public statements, letters to members of Congress and the Central office, the division was made."[38]

As Liz and Preston drove back up the dusty road to Highway 40, they had ample time to reflect bitterly on the historical parallels. How much like this meeting must have been the conference at Los Pinos at the time of the Brunot Cession.

John Boyden had said this solution imposed on the mixed-blood Uintahs was for their own good. The Honorable Felix Brunot had said at Los Pinos, "It is not for me or any white friend of mine that I am talking to you. . . . [I]t is because I know that it is good for the Utes." The mixed-blood Uintahs had been euchred out of the full-bloods' timber for the token price of $8,000 and had to pay the tribe a 10 percent discount on their own timber to boot. Worse yet, they had paid Boyden for his "services." And Liz's own brother had willingly played the white man's game. It was now plain that there would be nothing from the timber resources to educate, clothe, or feed Liz's children.

# 4

# THE GAMEKEEPERS (1957–58)

*There is something wrong here, in a situation that is slightly malodorous, to say the best that can be said for it. Many responsible people believe there should be a halt to all programs here pending an impartial investigation by disinterested persons without connections in this state. . . . These innocent people seem merely to be seeking justice, or at least an opportunity to be heard.*

*Rev. Howard B. Allen, Episcopal Church Missions to the Utes, June 1, 1957*

The Legion Hall in Roosevelt might have been any one of thousands of multipurpose facilities in the small communities dotting rural America. Like many buildings unoccupied except on special occasions, it was more functional than comfortable. The room was tidy, albeit virtually devoid of furnishings.

It was December 1957. Preston Allen sat behind a simple wooden table, the morning sun beaming directly into his eyes through the uncurtained windows. He squinted but did not try to move. Its warmth was welcome. The other four AUCU directors—Liz Bumgarner, Elmer Hackford, Art Workman, and Lula Murdock—sat opposite him, all wearing sweaters or coats to ward off the cold.

Since November 2, 1956, the AUCU Board of Directors had met frequently, often daily, acting on myriad financial matters. Their annual budget, covering land management, fish and game, law and order, and mineral leasing, was running into hundreds of thousands of dollars.[1] None of them had the accounting or financial background to properly discharge such responsibilities.[2]

Moreover, the task of managing more than a million acres of surface and mineral rights was becoming larger than the board could cope with.

Aware of their dilemma, Preston had called this emergency meeting in the Legion Hall, rather than in the courtroom at the agency, because he wanted to be away from the influence of John Boyden and the BIA. As calendar year 1957 was ending, it had become evident to him that they needed expert help. There was yet time to secure such help and perhaps correct the unfair property division imposed on the mixed-blood Uintahs in April and October.

None of the AUCU board members had banking connections to call on for the help they needed. Many of them did not even have a checking account. They had the same credit requirements as other ranchers, but they purchased feed, livestock, or equipment using the BIA's revolving credit program, funded with tribal money.[3] Preston and Elmer were delegated to talk to local commercial banks. They approached one in Vernal and the Commercial Bank of Utah at Roosevelt, which in due course was to become a branch of First Security Bank of Utah, but received no expressions of interest. It was puzzling and discouraging.[4]

The joint meetings with the tribe had been a shock. Former Superintendent Crow had promised the directors when they took their oath of office in June 1956—actually, before that, then Superintendent Gilmore had made the promise when the termination program was proposed in the summer of 1954—that the BIA would continue as trustee for communal property and as guardian for individual mixed-bloods. The BIA was supposed to give AUCU advice and technical assistance until the final termination date on August 27, 1961, for individuals and until August 27, 1964, for property. Fleming, the new superintendent, seemed to disregard the promises made by Gilmore and Crow and to take the position of the tribe, representing the full-bloods, even if it was contrary to the interest of AUCU and the mixed-bloods. So many changes in superintendents seemed to destroy continuity in their promises.

Boyden was obligated under his contract and as a matter of professional ethics to faithfully protect their interests, even though he knew they had wanted a different attorney. The AUCU board had every right to expect that both Boyden and the BIA would be at least as forceful in asserting their rights as they were in asserting the rights of the tribe, but the BIA refused even to consider their ideas or objections.[5] It was the mixed-blood Uintahs, after all, who were most in need of help. They were the ones being forced into new and unfamiliar responsibilities immediately while the full-bloods were given additional time to prepare. But it had already become clear that on any crucial issue, both Boyden and the BIA would take the position of the full-bloods and ignore

the provision in Boyden's contract that in the event of a conflict of interest he would take the part of neither group.

"I have represented the Ute Indian Tribe for better than 20 years," Boyden said years later when Preston confronted him through his attorneys. "The Affiliated Utes asked me to do this. And so I took a limited contract in which I agreed to do it. Now, all of my work has to be approved by the Secretary of Interior [and] I have the consent of both. . . . But in any event, it was never intended that I would ever desert the Ute Indian Tribe."[6]

The mixed-blood Uintahs were scheduled to receive their individual shares of the commonly owned funds and other assets of the Ute tribe in August 1961. Boyden's Plan for Distribution, ratified at the AUCU membership meeting in July 1956, specified that the rangelands and mineral estate would be distributed in the form of stock in the three corporations.

Stock in business corporations was something few Utes had experience with. The Meriam Report warned in 1928 that individually owned property, particularly intangibles like corporate stock, would be a source of problems for the Indians unless they were strictly supervised and carefully advised. They would need help in managing all personally owned property, corporations in particular, if they were not to squander it, for they had a tradition of communal property.

The AUCU board proposed that the BIA establish accounts for the individuals and furnish them with advice until they learned more about corporations, but Superintendent Fleming refused. The mixed-bloods must prepare themselves for termination, he said, and could no longer rely on the BIA. They should develop other business relationships; he suggested contracting with a commercial bank to handle their accounts and manage the land and resources of the corporations.[7]

Unknown to the AUCU board, others were contemplating the future of the mixed-blood Uintahs in distant Salt Lake City during that Christmas season of 1957. As the bells chimed out "peace on earth, good will to men," George Eccles sat behind a high-gloss desk, stretching out on either hand like a huge court on which the financial affairs of little people were booted skillfully about by trained athletes. No scrap of paper, much less a speck of lint, disturbed the spotless surface.

The sumptuous office was adorned with priceless artifacts of ivory and jade. Eccles was a student of such Oriental treasures, some dating from the Ming dynasty. He was particularly proud of having spirited them out of China before the revolution of 1947 when the People's Republic outlawed export of archaeological treasures.

The bells, which had been installed atop the First Security Corporation's building on Main Street in the heart of the business district, symbolized the prominence and good deeds of Eccles's bank. First Security Bank of Utah, National Association, was one of the largest banks in the West and the most prestigious in the Rocky Mountain region. The bells, intruding into every commercial establishment in downtown Salt Lake City, were a pleasant reminder of the season. They were also a reminder that, like it or not, First Security's presence was inescapable. Was it also symbolic that the bells were electronic imitations, not a true carillon?

No one questioned Eccles's good deeds, at least not to his face. Here, truly, was a Brahmin of the mountains, if one could be found. Fifty-nine-year-old George Eccles was a brother of Marriner S. Eccles, a member of the Federal Reserve's board of governors from 1934 to 1951 and its chairman until he was replaced in a feud with President Harry S. Truman in 1948. Marriner Eccles represented the United States at the Bretton Woods Conference, which created the International Monetary Fund.[8] For a generation, the Eccles family had asserted wide-ranging influence, not just in the banking industry, but in the governmental bureaucracy in general.

The Eccles family was also well connected in Mormon circles. In later years Eccles boasted of the number of Mormon apostles and high-ranking officials on his board of directors and of the fact that his bank, rather than Zions Bank founded by Brigham Young, was the Mormon church's depository.[9]

Eccles was thinking about a report he had just received from his trust officer, Ralph Cowan. According to Cowan, Wesley R. Dickerson, manager of First Security's newly acquired branch in Roosevelt, Utah, had told a group of Indians that he was not interested in their business because banks elsewhere in the country had run into difficulty with the accounts of terminated Indians. Such accounts presented unique trust problems. Dickerson evidently believed that First Security's traditionally conservative policies would be inconsistent with involvement in such transactions.[10]

Beginning in the latter part of 1957, Dickerson had been in frequent contact with a Ute Indian by the name of Albert (Ab) Harris, a mixed-blood Uintah Ute acting in his capacity as an employee of the BIA. Harris had no elected position with the mixed-blood Utes, but he was prominent in tribal affairs and had been designated executive secretary of the AUCU by the board of directors because of his abilities and familiarity with the tribal assets. He should only have advised the board on property division, but he presumed to act on other matters. Former Superintendent Crow, in fact, had designated him

to contact First Security Bank with an eye to it becoming the commercial depository for their affairs.[11] Ab was disappointed by Dickerson's decision.

Dickerson's reasoning would ordinarily have been sound, but the Ute Indians' accounts were potentially gigantic, including more than half of the $32 million judgment for the Colorado Utes. Furthermore, Eccles and Ralph Cowan had been "in close touch with Mr. John Boyden of Salt Lake City, who, we understand, is attorney for the Ute Tribe," whose connections with government officials, the BIA in particular, and representation of many Indians in Utah and surrounding states were valuable.[12] He could turn a large amount of commercial business to Eccles's bank.

Boyden had given Eccles and Cowan considerable information about what was to happen, not just to the mixed-blood Uintahs, but also to the Utes who remained as members of the tribe and, indeed, to Indians located elsewhere in the United States. *All* of the Utes would eventually be subjected to termination. The Termination Act itself so provided. The full-bloods were just being given additional time to prepare themselves to be forced into Euro-American society. It was intended that in 1964, at the end of the tribe's long-range ten-year development program adopted in 1954, the Ute Nation in its entirety would be absorbed into American society.

Termination would be the policy of the United States for the foreseeable future, with the Ute Termination Act serving as a prototype for other termination acts, thanks to Senator Watkins. The goal was nothing less than the eventual elimination of Indians everywhere, at least as wards of the United States and as separate and identifiable cultural groups.[13] Termination was to end the trusteeship of the United States over Indian property and be the final solution to the Indian problem.[14]

An enormous amount of money would have to be administered for many years to come. The assets of the mixed-bloods already available for administration were considerable, but they represented a mere 27 percent of the combined assets of both groups. The share of the 73 percent who were classified as full-bloods and would remain members of the Ute tribe, at least for a period, would be much larger and therefore more desirable from a banking standpoint. There was also the prospect of administering additional funds for other groups of Indians who would be terminated. Eccles and Cowan had been discussing those matters with Boyden since 1955.

First Security Bank's file on the Utes documented that as early as December 22, 1955—before any organization had been formed to represent the mixed-bloods and before any plans for distribution of their assets had been

ratified by the members—George Eccles wrote to Glenn Emmons, commissioner of Indian affairs, with a personal appeal that First Security Bank "might be recognized as a trustee" to act for the full-blooded Utes, either while they remained in the tribe or when termination plans were adopted for them. Eccles's proposal, thanks to his early inside information from Boyden, was well ahead of any proposal from any other bank.

Eccles had referred to "a trust account totaling $7 million to $8 million for the full-blooded Ute Indians in the Roosevelt area [that] is to be established." He had written to the commissioner in December of 1955, "We would, of course, like to get this business."[15]

Eccles's "personal" appeal, and his advantage in lead time, did the job. In a letter dated January 4, 1956, addressed warmly, "Dear George," Emmons assured him that "as their plans materialize the services of your organization will receive consideration." Eccles promptly responded on January 16, 1956, that his interest was in securing "trust funds for the Ute Indian Tribe."[16] After a distinction was made between mixed-bloods and full-bloods in membership rolls published on April 5, 1956, Eccles continued to aggressively solicit the BIA and Boyden for the business of the full-blood group. Neither then nor earlier had he expressed an interest in the business of the *mixed-blood* Utes or in other American Indians. If Eccles had any interest in the mixed-bloods, he did not express it.

Still, some of the negotiations Eccles and Cowan had carried out with Boyden had coincidentally involved the bank with the mixed-bloods. During 1957 they negotiated an agreement with Boyden establishing First Security Bank as the depository for the per capita funds that would be distributed to the mixed-bloods. Wesley Dickerson, manager of the Roosevelt branch, became acquainted with Ab Harris because the two of them worked on that project, but other high-ranking bank officers, including Eccles himself, were involved in the negotiations.[17]

On August 8, 1957, Commissioner Emmons transmitted a form agreement for execution by the bank for the mixed-blood per capita payments, to begin on January 1, 1958.[18] The "authorized representative" of the mixed-bloods had not been consulted; he did not send the AUCU copies of the agreement.

At George Eccles's suggestion, elaborate instructions were prepared designating the superintendent at Fort Duchesne as "disbursing officer" for the accounts.[19] U.S. government disbursing symbols were shown on the checks issued to the individual mixed-bloods, though they were issued by First Security Bank. The checks issued had an official appearance, even to the extent that they were printed in a form that resembled the U.S. Treasury checks the

Utes had previously received for their per capita distributions. Only the color was different, and the seal of the United States, which it would be a felony to reproduce, was omitted.[20]

Fred H. Massey, assistant to the commissioner, and Fred Haverland, area director in Phoenix, agreed that these look-alike checks "would without doubt, be advantageous."[21] The mixed-bloods receiving the mock Treasury checks would likely conclude that they could rely on First Security Bank in the same way they had relied on the U.S. Treasury. That trust would give Eccles's bank one additional advantage in securing the administration of their funds.

Eccles's letter of February 20, 1956, indicates that he decided to broaden his efforts and obtain the business of those who were not part of the full-blood group and whose accounts had not been referred to in the earlier letters to the commissioner. The mixed-blood business would be a stepping-stone to the larger prize of full-blood accounts, and Eccles's bank was the front-runner. Eccles must have observed that Boyden controlled the affairs of all the Utes, mixed-blood and full-blood. Obviously, Boyden and the commissioner were making the decisions for the mixed-bloods. The AUCU, the official "authorized representative" of the mixed-bloods, had not even been organized when Commissioner Emmons and Boyden told Eccles what the plans would be. Nor did the plans change after the AUCU came into existence.

Though the rationale of the Termination Act was that the mixed-bloods could manage their own affairs, they had not been involved in managing the per capita payments in any way. The indication in Eccles's letter of February 20, 1956, that he had been in close touch with Boyden indicates that Boyden was making, or at least controlling, the decisions.

If Preston Allen and the AUCU board agreed to engage Eccles's bank as their depository, business agent, and adviser, they would once again become pawns in the white men's money game. Eccles's prior contacts with Boyden, Commissioner Emmons and other BIA officials, and Ab Harris's role in selecting First Security Bank to represent the AUCU, meant that their fiduciary was being selected by the very persons they were in conflict with over the division of assets. They needed a fiduciary's help in resisting the effects of that conflict. But the fiduciary and those they were in conflict with were undisclosed teammates.

Ralph Cowan, senior trust officer of First Security Bank, was directed to meet with the AUCU in January 1958.[22] The business of the full-bloods was still the grand prize and ultimate objective of First Security Bank; but in the interim, the bank would secure the smaller mixed-blood accounts. That was only good business.

It seemed to Preston and Elmer that the other bankers understood First Security Bank's private arrangement with the BIA to handle the mixed-blood accounts.[23] That seemed to be confirmed when Superintendent Fleming summoned Preston Allen and the AUCU board to a meeting on January 7, 1958, at the Salt Lake City offices of First Security Bank.[24] Ab Harris, acting as AUCU's "executive director," had arranged the meeting even while Preston and Elmer were knocking on bank doors in Vernal and Roosevelt. In attendance were Superintendent Fleming and Boyden. Cowan conducted the meeting, explaining the many services a large trust department like First Security's could perform.

No minutes were kept, but Cowan wrote a follow-up letter to Ab Harris on January 16, outlining the main points. "We might be of service to individual members of your group, as our Trust Department is authorized to act as guardians of estates of minors or incompetents. . . . We can also act as trustee for trusts established by individuals who are not minors or incompetents."[25]

Preston, Elmer, and the AUCU board were assured that they could rely on the bank to protect their interests. Superintendent Fleming assured them that if First Security Bank was engaged as trustee, it would protect them as the BIA had done in the past.[26]

The AUCU board had no knowledge at that time of the contradictions implicit in the BIA's assurances; it was exactly the kind of help Preston and Elmer had been looking for. Help for the individual mixed-bloods was important if they were not to be cheated as had Indians during the allotment era.

Cowan explained that when the two range corporations and the distribution corporation, which would handle the mineral rights and unliquidated and undistributed claims, were formed, all three of which were required by Boyden's Plan for Distribution, they would need a transfer agent. Transfer agents are fiduciaries who maintain a record of the identity of shareholders, handle the transfer of shares, and are usually necessary for a corporation with a large number of public shareholders. Banks act as transfer agents, Cowan explained, and he outlined the services First Security offered.[27] As the largest bank in the region, Cowan informed them, it was the best qualified to perform that function.

Preston Allen and the other members of the board were surprised to learn that there was such a thing as a transfer agent or that one would be necessary. Cowan explained that the provisions of Boyden's plan concerning the sale, lease, or exchange of shares between members of the mixed-blood group made a transfer agent desirable, perhaps necessary. Boyden had told Cowan that the shares would not be useful to the individual Indians unless they could be traded among themselves,[28] for otherwise an individual share would represent too small an interest in the range to be of use.

"Some stockholders might wish to sell their shares or assign their grazing rights," Cowan pointed out. "Our office at Roosevelt might be of service in this connection, particularly in the case of stockholders who do not live in the area." He explained that, particularly with public corporations such as theirs, the transfer of shares among individual stockholders, some of whom would not live in the area, was technical and time-consuming. "The corporations would not be involved in this, as the Bank would be acting for the individual stockholders."[29]

The AUCU board made no decision about engaging Eccles's bank as their representative through the summer and fall of 1958. They called a general membership meeting on November 1, 1958, at the Legion Hall in Roosevelt, rather than in the community hall at Fort Duchesne. A throng of Indians in colorful attire was on the streets of Roosevelt that day. It seemed good to Preston and Elmer that they had scheduled the meeting in Roosevelt, for the mixed-blood Uintahs badly needed to be away from the domination of the BIA and to look after their own interests.[30]

The general membership meeting would be the mixed-blood Uintahs' first opportunity to decide to ratify the corporations—or perhaps reconsider Boyden's provisions for the use of corporations since the high-pressure meeting in July 1956. They did not know that two weeks before, Boyden had filed the articles of incorporation with the State of Utah creating the two range corporations and that he had designated First Security Bank in their articles and bylaws as transfer agent.[31] Boyden evidently had acted on behalf of Cowan or Superintendent Fleming—perhaps for both of them—for the corporations could not make such a request until after they were formed.

When Preston and Elmer got to the Legion Hall, they had already lost control of the meeting. There was no reconsideration of the Plan for Distribution. Instead, as "temporary chairman," Ab Harris ran the meeting with an iron fist. He allowed no meaningful discussion of the issues they had been assembled to consider. Oran Curry, the venerable elder of the Uncompahgre band and father of both Liz Bumgarner and Rex Curry, tried repeatedly to ask whether the lands could be divided rather than placed in the corporations. That way, each livestock operator could control his own range and the services of First Security Bank would be unnecessary. Harris simply ruled Oran out of order and said he would have to raise the question at a later meeting.

Harris moved ahead stubbornly. In frustration, Oran walked out. Elmer's brother, Calvin (Callie) Hackford, followed Oran out of the Legion Hall and sat on the steps with him, listening as Oran explained to him the importance of land to the Indian way of life. Converting it to stock in corporations, he warned, would destroy the Ute culture.[32]

As they talked outside, Ab Harris was inside railroading through a resolution accepting the three corporations. Oran Curry's objections were not heard that day—or ever.

Then, as the vote was completed, Wesley Dickerson, together with Paul Murphy, assistant manager of the Roosevelt office, Max Thomas, senior vice president, Roy W. Hanson, vice president, and Leonard Jacobs, trust officer, of the main office in Salt Lake City, walked into the meeting, as if on cue. Cowan and First Security Bank had aggressively solicited the AUCU board throughout 1958.[33] Superintendent Fleming had met with the AUCU board and indicated that First Security Bank would make an offer to buy their outstanding loans with the BIA. Harris turned the meeting over to the bankers to discuss the services a bank might perform, with a focus on trusts. He allowed no digression to other matters.

"Nothing is as cheap, for the services rendered, as a trust organization," Jacobs said. Harris supported him: "If we try to set this up ourselves, it will be an expensive operation. Instead, if we can lease to our bank the management of property, it will cost us less money."[34]

Thomas told the assembled Indians, "We want to help out on this problem. Setting up these corporations is unique. If we don't know how to handle this work, we will find out how. We don't know any more about [grazing] fees than you do or how big an office we will need. However, we will be willing to go along with you." The bank thus assured that it, rather than the individual mixed-bloods or the AUCU, would arrange to lease the range for their mixed-blood clients. Those in the livestock business must secure enough feed for their animals; those not in the livestock business must obtain some economic benefit from their shares.[35]

Two weeks later, on November 13, 1958, Boyden filed the articles of incorporation for the third corporation, the Ute Distribution Corporation, with the secretary of state for the State of Utah. Again, the articles and bylaws designated First Security Bank as its transfer agent. Three days later, on November 16, the delegation of bank officers reported to Cowan, "We suspect substantial balances will be involved." They agreed that the bank should attempt to secure the business of "those persons who are not full blood Indians under the law," in addition to the full-bloods with whom Eccles and Cowan had been working since 1955.[36]

First Security Bank continued to pursue the mixed-bloods' business. On August 21, 1959, Jacobs urged Superintendent Fleming to consider trusts as the best solution for the needs of the mixed-bloods, including for minors whose funds must be supervised until they became adults: "It would seem to us that if the Agency of Bureau of Indian Affairs has the authority to make an investment

of a minor member's funds in an endowment policy which could not be cashed until such member reaches the age of 18 or sooner dies, that such Agency or Bureau of Indian Affairs would also have the authority to create a trust for the benefit of such minor member which trust could not be terminated or funds withdrawn therefrom until such time as such member reaches the age of 18 or sooner dies."[37]

Preston Allen still needed to be sure about banking transactions of such magnitude. He was president of the remnant of the entire Uintah band, and these transactions involved millions of dollars and even larger amounts of property. He must discharge his responsibilities carefully.

Preston determined to visit the offices of First Security Bank in Salt Lake City to verify the promises made by Ralph Cowan and the other bank officers in attendance at the January 7 and November 1, 1958, meetings. When he arrived at the bank, he was met by Ralph Cowan. He was shown the administrative and trust offices of the Bank,[38] which occupied two entire floors of a large office building on Main Street. He saw rooms filled with accountants working with calculators and other machines. He was shown the stock transfer department, one of the largest in the West, if not the entire United States. He was introduced to people in the trust department who demonstrated their expertise in property management.

Cowan reassured Preston that the bank would act solely for the benefit of the AUCU and its members and that it had a large staff of lawyers on retainer to scrutinize the work of the tribal attorney. All of these complex facilities, resources, and personnel would protect the AUCU.[39]

When Preston explained that the assets of the AUCU and the majority of its members were located in the Uintah Valley and that it might be inconvenient to have an agent in Salt Lake City, Cowan had a solution. First Security's new branch in Roosevelt, the major community closest to Fort Duchesne and located in the very heart of the reservation, did not have a trust department, but it could be designated agent for these purposes so that the mixed-blood Uintahs could have a financial consultant close to them.

Preston was duly impressed. Notwithstanding how First Security had been selected for them and how they had effectively been denied access to competing banks, it seemed that First Security did indeed have the competence that had been promised.

The next day Preston returned to the reservation and reported positively to the AUCU board. They were all optimistic about the future of the mixed-blood Uintahs. At last, they felt, they had experts of their own, to match those of the BIA and the tribe. Boyden's divided loyalties would be of less concern.

The efforts of Eccles, Cowan, Boyden, and Harris culminated in the execution of a formal trust agreement for the mixed-bloods, but that would not occur until July 26, 1960.[40] It gave First Security Bank control of all of the property distributed under the Termination Act to those mixed-bloods under twenty-one years of age, who were defined by the act as minors, or whom the superintendent determined to be "in need of assistance" in managing their affairs, including their stock in the three corporations. It would have indirect control over all mixed-bloods as their "business agent." Since the shares of the minors were such a large plurality, control of them would amount to control of all. First Security Bank also had control over the rangelands by reason of the transfer agent agreement.

At that point First Security would have intimate knowledge of the financial affairs of each and every mixed-blood and influence—in many cases, control—over the corporations themselves and a significant fraction of the funds belonging to the mixed-bloods. The stage was set for another betrayal.

# 5

# SPOOR OF THE MIXED-BLOODS

*Out of his meager resources, he contrives a generosity of spirit which leaves us speechless, yet we think him a simpleton for allowing himself to be out-guiled by the unscrupulous. So we see him always through lenses of a culture which is not his, which he never claimed as his own, and which he has not yet desired as his own. All the difficulties we have with Indians, trace to that; all the wrong things we do for Indians, trace to that. Some day we may learn better, here, and wherever in the world we have two races, two cultures in contact.*

*D'Arcy McNickle, 1943*

As my investigation of the affairs of the mixed-blood Uintahs progressed, many of them and many full-bloods too became frequent visitors to my law office and many of the culture traits explained in the Meriam Report became evident to me. Frequently frustrated and perplexed, I came to understand why the Meriam Report concluded that help was necessary if the special relationship between the United States and its Indian citizens must be ended. It was also clear, outrageously so, that the mixed-blood Uintahs had not been afforded the necessary help.

In 1966 reports prepared by the Extension Division of the University of Utah under the auspices of the BIA became available to me through the discovery phase of the lawsuit I filed for Anita Reyos, Dot Hendricks, and Marguerite Murray.[1] The BIA had employed social workers and other "experts" to study the experience and background of every Ute who was to be terminated. The staff, which included sociologists, psychologists, business administrators, agronomists, and educators, had conducted 4,768 interviews with individual

mixed-bloods during 1955–60, at an expense of $360,180.50. Every adult on the mixed-blood roll living in the area of the reservation—255 persons—was contacted regularly over a period of six years, some more than one hundred times and the average number twenty. The reports were contained in files for each individual assembled by Superintendents Crow and Fleming. Each file contained a social worker's report, personal and family background information, an account of each individual's past experience in dealing with property, and other information pertinent to the BIA's termination of its duties as guardian and trustee.

The provisions of the Termination Act requiring seven years of continued supervision for each person and ten years of restrictions on his or her share of the property,[2] implicitly recognized that all of the mixed-bloods needed help.[3] The trust agreement with First Security Bank was the method adopted to provide that help. It contemplated a formal trust for those "in need of assistance in conducting their affairs," with consideration to be given by the trustee to the needs of members of their family. A person did not have to be a minor or actually "incompetent" to qualify for help, and the discretion of the trustee extended beyond those formally subject to the trust.

The promises that Ralph Cowan and the officers of First Security Bank had made would be effective only if the nature and degree of help each individual needed was identified. The social workers' files appeared to be a good start. When First Security Bank became trustee and business agent for the mixed-bloods, these same files were available to state and county officials and, undoubtedly, were also available to Ralph Cowan, the bank's trust officer.[4] There appeared to be little follow-up on the reports by either the bank or the BIA, however. Few of the adult mixed-bloods were given assistance of any sort.

Thumbing through the files at random, I could see that they recorded the familiar stereotypes of the American Indian. The stereotypes, like those of other ethnic groups, were not true or were exaggerations, but in any event they generally did not mark the person they described as incompetent. Even so, the files and my personal experiences with mixed-bloods and full-bloods alike were a sad commentary on the Indians' lack of facility with Euro-American society. They all but shouted a need for protection against the inadequacies they revealed.

### MARGUERITE MURRAY HENDRICKS, MIXED-BLOOD UINTAH, AGE FIFTY-SEVEN

A notation in Marguerite's file stated that on September 19, 1952, after the Northern Utes received per capita payments from the Colorado judgment, Mrs.

Hendricks borrowed $7,953.75 and spent $6,000 for two hundred sheep, but "Mrs. Hendricks reported she lost her sheep and did not know what became of them." The BIA's file spoke of Mrs. Hendricks as if she were a modern-day Bo Peep. Surely she was "in need of assistance in conducting her affairs."[5] Here was the familiar stereotype of the improvident Indian.

Mrs. Hendricks complained to the commissioner of Indian affairs on March 25, 1957, the "so-called Superintendent . . . withholds an individual's last dime and leaves him with not one thing to live on." The BIA had taken her per capita payment—her only source of income—to repay the loan for the lost sheep. The BIA also built irrigation projects in the area where Mrs. Hendricks lived. She had no use for irrigation water but was required to pay assessments for it just the same.[6]

Someone at the BIA Credit Office at Fort Duchesne had jotted on the record: "It is not easy to converse with Mrs. Hendricks. . . . [S]he does not always know what one means and also one does not know what she means."[7] Still, for all Mrs. Hendricks's limitations, she knew well enough what the source of her problem was. The file indicated that Mrs. Hendricks was so "disturbed over the planned termination" that she had written letters to the secretary of interior and Senator Watkins in 1955–57 "requesting the abolishment of termination and the removal of Attorney John S. Boyden."[8]

The file on Mrs. Hendricks disclosed that in a letter dated July 20, 1959, she had advised the superintendent, "I am without a crumb of food in my home. Still I am staying and trying to take care of my garden and my chickens . . . and I am desperately in need of assistance." She complained in another letter on October 12, 1959, "I do not have means of transportation, neither do I have the price of a phone call. . . . My rent was due on the 7th and my landlord is threatening to throw me out. . . . I have been helping my little grandchildren to live. So I never have a dime for my own benefit and it is getting plenty tough."[9]

Marguerite's letters went unheeded. Assistant Secretary of Interior Roger Ernst dismissed her objections in a letter of March 11, 1959: "Under careful planning these [per capita] payments, along with wages earned during the seasons when employment is available, should provide an income to meet general living needs."[10] The superintendent did not place Marguerite Murray Hendricks under trust supervision. The records of both the BIA and the bank demonstrate that only those who were minors or mentally incompetent were given trust protection and the alternate qualification—"or in need of assistance in managing their property or personal affairs"—was ignored almost completely. Cowan therefore did nothing to help Mrs. Hendricks, or others like her,

under the business agent provisions of the trust or the provisions for assistance to members of the family of those who were formal trust beneficiaries.

Both the BIA and the bank treated the trust as an ordinary one and ignored or forgot the special circumstances for which it was created. Those like Mrs. Hendricks probably were not incompetent in the legal sense of that term, but they were badly in need of assistance in overcoming the crippling stereotypes and adjusting to life in another culture.

There were few jobs on the reservation, even for young men. Certainly there were none for Marguerite Murray Hendricks. With no special skills, other than perhaps Indian arts and crafts, she had been conditioned her entire life to live on the periodic per capita distributions the government doled out to the Utes. The American public viewed those payments as a gratuity from public appropriations and failed to comprehend that they were the Utes' funds, produced from their tribal enterprises, mineral leasing, or settlement of their claims arising out of the 1880 removal agreement or the 1865 Treaty of Spanish Fork.

Senator Watkins and the advocates of termination may have been correct in asserting that the Indians would be better off if they did not rely on the per capita payments. Doing so was different from living from paycheck to paycheck, as many in non-Indian society do, for a paycheck is earned income. It was also different, in a sense, from a non-Indian living on unearned or inherited resources, such as corporate dividends, because of the additional limitation and supervision that had been supplied by the special relationship. If the support and the protection of the special relationship was to be removed, the Indians should have received assistance while they were learning new skills.

Someone should have recognized that persons of advanced years, like Mrs. Hendricks, might never be able to acquire the needed skills. It was no fault of Marguerite Murray Hendricks, or of other Indians, that they had no opportunity to develop the ability to manage individually owned property. It was the Indian culture and way of life that conditioned them to depend on their periodic distributions, not indolence as Senator Watkins apparently assumed.[11] Their communal system applied the combined wisdom of respected elders to the management of property, and that communal wisdom was another brake on the improvident dissipation of property that made the individual responsibility required in Euro-American society less necessary.[12]

It was unlikely that Marguerite Murray Hendricks could change the pattern of life at her age. On the contrary, she was already failing in her efforts to cope with the life that termination had thrust on her. The "Indian problem," which Watkins and the architects of termination intended to end, and the larger social

problems they were obligated to deal with were obscured by their preoccupation with money.

## MELVIN REED, UINTAH UTE, AGE TWENTY-THREE

Melvin Reed exemplified the pathetic image of the Indian derelict panhandling on city streets. By the time I first met Melvin, he was already in trouble with the law. The BIA had sent him to Denver in 1958 under the relocation program to study diesel mechanics, but the social worker's file indicated that he was unable to complete the training because he could not handle his financial obligations. He was then sent to Salt Lake City to study electronics, but the file indicated that he had the same problems. When he returned to the reservation jobless, his problems continued. He was charged with the crime of forgery for writing a $20 check on a binge for which he had insufficient funds. That indiscretion might have been treated as a civil matter, for prosecutors find it difficult to prove criminal intent in such cases, or with a tap on the wrist if Melvin had been one of the Mormon boys whose parents had some influence in the Uintah Valley, but Melvin had been convicted on a twenty-year criminal charge—one year for each dollar—and was in the Utah State Penitentiary.[13]

Melvin was intelligent and gifted and had a good sense of humor. Though descended from the old trapper Jim Reed,[14] Melvin looked decidedly Indian and took definite pride in his Indian identity. He was handsome, with deep-set brown eyes and jet black straight hair.

"Some of the Affiliated Utes look like a white man," Melvin explained when I deposed him at the Utah State Penitentiary in 1967. "In my own case, I'm more of an Indian than I am a white man. If given the choice, I'd go with the Indians."[15]

I often thought, as I observed Melvin's clean, handsome features, that he would have cut quite a figure a century before, riding with Wakara's warriors on one of their legendary raids into Sonora or California or stalking game in the Timpanogo. But this was the twentieth century, and Melvin was having trouble in the non-Indian world.

Unlike non-Indian children, Melvin had been conditioned to attach little importance to owning personal property. Like Marguerite Murray Hendricks, the Reed family managed on feast-or-famine cycles linked to their per capita payments from the Utes' commonly owned resources, and it was obvious that they viewed the expected recovery from the suit I was conducting for them in exactly the same light.

Melvin's family had no experience with operating business corporations.[16] The dominant influence in their lives was not the Protestant work ethic but the ancient myths of beings sharing human and animal characteristics. According to the legends, Sinawulf (Wolf, the Ute culture hero) had created people from bundles of sticks gathered in a sack, but his little brother, Coyote, the trickster, had untied the sack and scattered the people over the country to speak different languages. The small group left in the sack were the Utes, who Sinawulf said would be brave and able to defeat all the rest. The legends told of a time when the earth was flat and smooth everywhere, when the animals lived in harmony. Then Sinawulf's errant arrow plowed up the face of the land, creating mountains and canyons, separating the people into quarreling groups.[17] The tribal myth culture taught the Utes the values of communal living and sharing.[18]

After the development of the reservation system when administration of Indian affairs was transferred from the War Department, the BIA approved all management decisions concerning commonly owned Indian property and protected them against improvidence. The combination of BIA supervision and the myth-based culture of sharing were factors that left Melvin and others like him disadvantaged and often incapable of management of individually owned property. Melvin was not necessarily irresponsible; he was generous and expected generosity in return. The betrayal of that expectation by a culture with a different set of values stranded Melvin between two worlds.

Melvin and Liz Bumgarner's son, Reggie, chummed around together and regularly visited my office after Melvin was paroled in 1969, to inquire how "our case" was going. I saw Melvin often enough to know that those traits that handicapped him in dealing with personal property also led him into petty and even serious difficulties with the law. Melvin's visits always ended with a request for a "loan" of a few dollars. I knew from experience that Melvin would spend it for a jug of wine—usually one of the cheap screw-on cap varieties made from apples.

Once, against my better instincts, I "loaned" Melvin $20 rather than the "fin" he asked me for. I warned him against getting into trouble. The money was merely an "advance," I explained, for Melvin's promise to help me move some furniture.

Melvin left with his young friend Reggie. About midnight I was awakened at my home in Emigration Canyon five miles from Salt Lake City by two men knocking at the door. Anticipation of trouble—robbery, assault, whatever—was dispelled by Melvin's inebriated voice in the darkness. "Mr. Nielson, I wanted you to pay this cab driver for me!"

The cab fare was $52.75. Melvin and Reggie had taken the cab to Brigham City, some fifty miles distant, to look at a $40 jalopy. It may have been their first experience with a cab, and they may have assumed it would be something like riding the bus. Surely the $20 would be more than enough to cover bus fare. I told the driver to take the boys home and see me at my office the next day, when I paid him.[19]

Most non-Indians are exasperated by such incidents. But from Melvin and Reggie's point of view, the request was reasonable. Their lawyer should be their friend. Were the roles reversed, they would gladly have parted with a few dollars for a friend in need. In fact, they often did so and were—in non-Indian terms—chronically broke.[20]

I learned more about Melvin's generosity (or improvidence, depending on one's point of cultural reference) as a result of what he called "those jolts"—time served in the county jail for his frequent petty offenses. One day my phone rang. It was Melvin on the other end, calling from jail. "Go down to city court and help my friend Montoya at his arraignment," he requested.

Explanations that legal services were expensive did not seem to deter Melvin. I became so exasperated with such requests that I determined to put them to an end. I prepared an agreement that such services would be paid for out of Melvin's share of funds when they were recovered or distributed. My intention was clear and simple. I wanted Melvin to realize that if he made too many requests to help fellow inmates, he would have no money. But this economic lesson was lost on Melvin.

Melvin signed willingly. "Just put it on my tab," he would then say in his calls from jail. He took the arrangement as an invitation to become a one-man legal aid society for every derelict he found in the drunk tank. Tomorrow would take care of itself, in Melvin's mind. The immediate problem was that a fellow human was in need. And tomorrow *would* have taken care of itself—if everyone had Melvin's values.

Every strength can, in excess, become a weakness. The excessive generosity of Indians like Melvin was bound to be their undoing when they were forced into the more competitive, acquisitive Euro-American society.

I once asked Melvin for his opinion on an article of Indian jewelry I had just purchased from an itinerant Navajo salesman sent to me by Larry EchoHawk, the Pawnee Indian who later became attorney general of Idaho. "Here, if you like that, take this," Melvin said, fishing a better piece out of his pocket and pressing it into my hand. During his term in the Utah State Penitentiary, Melvin devoted himself to making an elaborately tooled leather briefcase in the prison's craft shop which he proudly presented to me when he was released.

standard. In fact, he was one of the ablest Indians in the entire Uintah Valley. He was the same man who had gone to Washington, D.C., as a member of the Ute Special Delegation to testify before Senator Watkins's subcommittee on termination.

However, Ab Harris was no better able than other mixed-blood Uintahs to resist the pressures to sell his share of the common assets distributed under the termination law. Like the others, he sold his share of those assets for inadequate consideration. Representations by Ab to Watkins's subcommittee that the Uintahs were ready for termination, or to be "turned loose" as he put it, proved false in his own case just as had been true for the others.

When Ab Harris died on April 28, 1971, his claim had been litigated and an agreement for its compromise had been entered into with First Security Bank. Lucille D. Harris, his widow, requested that the amounts recovered for Ab be paid to her. She was advised that probate of the Ab Harris estate would be necessary and that she should engage a lawyer of her choice, other than me, to conduct it. She chose John S. Boyden.[25]

"I will not presume to question the propriety of Mr. Boyden now representing interests he formerly opposed," I explained in a letter to an associate in Boyden's office who was assigned to conduct the probate.[26] Boyden's associate had the good sense and judgment to obtain the necessary approval of the probate court for the compromise of Ab Harris's claim quietly, with no further incident.

## ELIJAH MAXWELL CHAPOOSE, FULL-BLOOD UINTAH, AGE FORTY

"Maxie" Chapoose came to me in late 1969 and early 1970, together with Julius R. Murray, Wayne Perank, Vaughn H. Pike, and Stewart Pike. All except Murray, who was 50 percent Ute, were full-bloods. All but Murray were married to non-Indians, which meant that their children would be classified as neither mixed-blood nor full-blood after the final rolls of the two groups were published. Only those of *more* than 50 percent Indian ancestry would qualify for membership in the tribe. Murray himself was a victim of that provision.

"I am the only one on the tribal roll," Maxie explained to me in a letter of February 16, 1968. "My little boy is not. I want something set up so that if and when I pass out of the picture he will have my interest if any. I want him to be proud to say 'I am an Indian' although my mother is Caucasian." My "plea," Maxie explained further, is "that he will be able to say as an Indian this is what my father and his father left me because I am an Indian 'and proud of it.'"[27]

When I delivered a check for Fred's share of the first small recovery at his trailer home in Vernal, he was drunk as usual and mistook me for John Boyden. Fred wrestled me to the ground, shouting expletives, until he recognized his error, apologized, and gratefully accepted the money.

The social worker's file declared, "There seems little to be done for Fred." Nothing *was* done for Fred. The BIA declined to find him "in need of assistance in managing his affairs." Cowan gave Fred none of the personal assistance First Security Bank had promised.

## JOYCE THOMPSON, FULL-BLOOD UTE, AGE NINETEEN

Indian stereotypes were magnified by the effects of BIA paternalism. Ineffective at best, at its worst BIA supervision was downright demeaning. That may have been why some Utes, full-blood as well as mixed-blood, appeared willing to accept termination. It was a way to eliminate BIA interference in their lives. Joyce Thompson was a case in point. She had migrated to Salt Lake City, hundreds of miles from the reservation, under the relocation policy. Her boyfriend got in a scuffle on the streets. Though only a spectator, she was also arrested, on a charge of attempted robbery.

Joyce spent more than a month in jail before Melvin Reed, the one-man legal aid society, brought Barbara Thompson, Joyce's sister, to me. Barbara explained the situation and asked me to help. I talked to Judge D. Frank Wilkins, who I had the good fortune to encounter at an office Christmas party in 1971 when his sense of compassion was at its highest. He agreed to her release on her own recognizance. The case was eventually dropped. In the meantime she was confined with hard-core criminals, junkies, pimps, and prostitutes, unable to post bail because Acting Superintendent Matt Cole would not allow her to use her own money for that purpose.

At the time of her arrest, Joyce had $4,000 on deposit with the superintendent, for use as she saw fit. Bail bondsman Louie Sonone's fee was a mere $150, and he was willing to write the bond on the assurance of the superintendent that she could pay. Joyce could avoid even that expense if the superintendent would issue her a cashier's check, which she could deposit with the court, returnable on her appearance.

Joyce could not get to Fort Duchesne to withdraw her money, and Acting Superintendent Cole refused to issue the cashier's check. When I explained Joyce's predicament to him on the telephone, he told me that he preferred that Indians use their money for better things. If she had a valid reason for getting out—such as potential loss of her job—he might reconsider; loss of personal

liberty did not qualify. If Indians waste money on such things, according to Cole, they will never "learn their lesson."[23]

Cole seemed unable to recognize the value of the constitutional guarantee of "life, liberty [and] due process of law" as far as Indians were concerned. There would be justifiable outrage if the nineteen-year-old daughter of one of the middle-class Mormon families in the Uintah Valley, or perhaps of Cole himself, were imprisoned without bail. That was the effect of the BIA policy, for if Joyce Thompson could not use her own money to secure release on bail, it was the same as declaring that she could be held without bail at all. It was merely a matter of policy, Cole explained to me. He would not disturb the bureaucratic system for something as trivial as an Indian's personal freedom. Again, this Indian had not been served by the BIA.

## ELAINE GARDNER, FULL-BLOOD UTE, AGE TWENTY-EIGHT

Elaine Gardner, the mother of eight young children, was struck and killed by an automobile near Roosevelt on the night of March 28, 1972, while walking home. The driver was a non-Indian state employee. The police report indicated that the official was not at fault because Elaine Gardner was walking in the street.

When I questioned the Duchesne County sheriff, George Merritt, about his report, he admitted that the skid marks were measured by another Indian at the scene at sixty-five yards, which indicated that the vehicle may have been speeding, and that Gardner had not been seen "walking in the street." I pointed out that the point of impact was at a well-established path crossing Highway 40 where a speeding automobile could not be seen because of a curve in the road. "Well, all of these Indians walk in the street," Sheriff Merritt replied, "Everyone knows that!"[24]

Shouldn't the driver have been tested for alcohol? Had he been speeding? Was the death of an Indian mother less important than that of a non-Indian? Sheriff Merritt's report made the case difficult, but a Salt Lake City attorney, Roy G. Haslam, accepted the challenge and negotiated a modest recovery for the children.

## ALBERT H. HARRIS, MIXED-BLOOD UINTAH, AGE THIRTY-NINE

It was not long before Preston Allen and Elmer Hackford brought Ab Harris to me, to inquire if I could help him with problems he was having under the termination law. Ab could not be considered lacking in ability, by any

standard. In fact, he was one of the ablest Indians in the entire Uintah Valley. He was the same man who had gone to Washington, D.C., as a member of the Ute Special Delegation to testify before Senator Watkins's subcommittee on termination.

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It was Maxie who had forwarded a copy of a petition demanding the resignation of Boyden, Curry, and McKinley to the president of the United States on March 21, 1958, asking for an investigation of the "misrepresentation" surrounding the Ute Termination Act. "For God sake do something for us before we do something we'll regret," Maxie pleaded with President Eisenhower, "or *me anyway*."[28] Roger Ernst, assistant secretary of interior, answered Maxie on April 18, 1958: "You will see that the plan which is based on the Act provides a progressive opportunity for the tribe and its members for improving their social and economic conditions. . . . Messrs. Curry, McKinley, and Boyden, have been retained by the Indian groups to carry out the improvement programs; and only the Indian people themselves can discharge them."[29] Maxie tried, in the only way he knew, to discharge them, but there was no investigation.

It was impracticable, though not impossible, for a private attorney to pursue Maxie's complaint, but because he was a ward of the United States it was necessary to get the approval of the secretary of interior to do so. The request was made, and Acting Assistant Commissioner Ralph R. Reeser stated in a letter dated July 24, 1968, "Since it is your intent to establish the interests of the minor children of these persons in tribal assets and obtain their enrollment as tribal members, your proposed contract with them will relate to trust property, and will be subject to Secretarial approval." An executed contract, "in quintuplicate," must be submitted through Area Director W. Wade Head in Phoenix.[30] Maxie and his friends found the expense of negotiating the bureaucratic maze more than they could bear and abandoned their efforts.

Marguerite Murray Hendricks, Melvin Reed, Fred Burson, Joyce Thompson, Elaine Gardner, and others like them, were bound to get into more trouble after they were "turned loose." Confusion over the termination law was bound to increase their confusion and frustration. It was simply not possible to change an entire culture in one generation or with the stroke of Senator Watkins's pen. It was surely not possible in the seven years Congress had dictated.

The problems the trust was to guard against went deeper than surface stereotypes. Ute culture and Euro-American culture were often incompatible. When Arthur Watkins and John Boyden spoke of "emancipating" the Indians, they failed to address the realities of the Indian way of life. The stereotypes fail to recognize that Indians are adept at dealing with communal property if they are allowed to do so according to Indian customs, even if in many cases they are ill-equipped to deal with individually owned money or intangible personal property.

The mixed-blood Uintahs needed the structure their own culture provided. With it they could function well in their own world.[31] When that structure was taken from them, many became easy prey for unscrupulous Euro-Americans and even for well-meaning merchants not sufficiently sensitive to the problems termination would create. The history of the allotment policy had already demonstrated that to be so.

The Indians' nonacquisitive, nonexploitive communal landownership and their tradition of sharing the bounties of life with one another were traits to be admired and emulated. At the same time, those traits left them ill equipped to deal with commercial entities such as the business corporations Boyden had insisted were to form part of his plan for the distribution of their property.

The Indian stereotypes were there for anyone to see in the superintendent's files. The Meriam Report was at that time a basic text for Indian administrators and had explained these problems decades earlier. The report cautioned that the "guardian should conserve the capital of the ward and not permit him to dissipate his capital for living expenses." It also cautioned that if Indian property was placed in corporations, the guardian should guard against the threat of loss of the Indians' shares. That must be accomplished by purchasing land or shares for the benefit of the Indians, either with their own funds or with reimbursable loans.[32] Had they been pursued, the policies proposed by the Meriam Report might have worked. They would have afforded the Indians time—more than one generation, if necessary—to develop the skills to deal with non-Indian society, and helpful supervision while they did so.

The policies advocated by the Meriam Report were interrupted by World War II. Congress and both major political parties were now calling for the repeal of New Deal policies.[33] Congress was calling for the elimination of the BIA altogether.[34] Senator Watkins, John Boyden, and Commissioner Emmons were familiar with the Meriam Report,[35] however, and had the training and experience to know that the plans they had forced on the mixed-blood Uintahs were a prescription for separation from their property. Ralph Cowan and First Security Bank, if they had the expert abilities to deal with the unique problems of Indians as they represented, should have been expected to be aware of and heed the warnings of the Meriam Report. That, after all, was why the BIA had contracted them to act as trustee and business agent. Moreover, the mass of information accumulated in the social workers' files should have enabled Ralph Cowan to deliver on the promise.

Time would prove that the Indians had been seduced by a false hope. John Boyden and the BIA closed their eyes to the clear warnings of the Meriam Report and the information in the social workers' files. Ralph Cowan never

gave any indication that he had looked at the warnings of the Meriam Report or that he related them to the interviews compiled with so much care and expense. They would act alone and in combination to turn the very weaknesses of the Indians against the mixed-blood Uintahs. They would manipulate those weaknesses to accomplish the acquisitive desires of others.

# 6

# SEDUCING THE PREY (1959)

*I wish to call the Senator's attention to one single document that is replete with promises made by duly appointed and authorized representatives of the U.S. Government and the Congress, to the Uintahs in 1865—promises never kept in the Treaty of Spanish Fork. . . . If the Senator is the friend of the Indian that he professes to be, he will recognize the fact that he is . . . dealing with a thinking, feeling group of individuals, and will do everything in his power to bring about a reappraisal of the whole situation here to the end that a more equitable program can be formulated for the benefit of the Utes.*

*William Reed, May 25, 1953*

Bundled warmly in his sheared-fleece coat, upturned collar shielding his cheeks, Elmer Hackford stumbled through the drifting snow in the spring of 1959. He was worried about his little flock of sheep.

Elmer had heard a coyote singing to its being that morning. Elmer no longer believed the old Ute legends of Coyote as the mischief maker. He had put aside the "superstition" of the native Ute. No, he was worried because his brother, Lewis, now a government trapper, was in the area with his long gun. If Lewis chased the coyote out of its territory, where it fed on rabbits, ground squirrels, and other rodents, it would be up to mischief. A nursing mother coyote deprived of her normal food would become an outlaw, taking any prey that was available. Elmer's sheep, huddled together under the drifts near Whiterocks, in snow caves created by their own body heat, might become the only food available to the coyote.

The old-time Indians understood, even if the Euro-Americans did not, that upsetting the order of nature caused most problems. The newcomers had not understood either that chasing Wakara out of his hunting grounds, killing his game, and keeping him from the fish had made him a marauder.

The passing winter had been one of confusion and frustration for the mixed-blood Uintahs—especially those engaged in the livestock business. John Boyden and the BIA officials who controlled the mixed-blood Uintahs' affairs had upset the traditional Ute way of doing things and rejected every effort of the mixed-bloods to devise plans of their own. Included in their plans were the three business corporations whose individualized shares would replace the traditional system of communal ownership of land and resources.

The Ute Distribution Corporation seemed to Elmer to be unrelated to the everyday affairs of his life. Its officers, elected by the shareholders, would replace the directors of the Affiliated Ute Citizens as the authorized representative and would sit with the Tribal Business Committee to manage the mineral leasing and supervise the distribution of its proceeds and money from claims for losses under the Treaty of Spanish Fork of 1865 to the individual mixed-bloods. Those were important duties, for mineral leasing had been a major source of the per capita distributions the Utes had relied on for so many years. The Spanish Fork settlement would be about $8 million. Yet Elmer, like most Utes, did not care which oil companies leased the tribal land as long as the per capitas kept coming. Where his sheep would graze tomorrow was the important question affecting Elmer's daily life.

And the answer to that question would depend on the two range corporations. They would control the range Elmer's sheep must have to survive. Elmer had no clear understanding of how such a corporation would work. His sheep could not eat stock certificates, and he was not interested in trading them, as Boyden said they must, in sharp practices with his fellow Uintahs. He was only interested in finding grass for the sheep. The stock certificates would be valuable to him only if they could be exchanged for land or access to it.

Elmer and his family wanted to have individual possession of his share of the rangelands. They believed that their experience in the livestock business qualified them to own their own range and that the combined wisdom of a large family like the Hackfords—more than twenty members on the mixed-blood roll—would enable them to avoid the mistakes of Indians during the allotment period. The 172,000-acre range allocated to the mixed-bloods in the division amounted to 351 acres for each mixed-blood Uintah. If they were each given that much land, the Hackfords might aggregate enough range for their stock. How many sheep the range could support would vary, depending on where it

was located and the availability of water, but a score or so of individuals, with hundreds of acres each, could support thousands of animals. Smaller ranchers, like Preston Allen, could band together so that their combined acreage might also be enough, or those not in the livestock business, like Art Workman or Liz Bumgarner, could lease their land to those that were. At least they would have a tangible asset, which they could deal with better than an intangible like stock in a corporation with which they had no experience.

Elmer and Preston had proposed to Boyden and the superintendent that they divide the range into individual tracts, as President Theodore Roosevelt had done when he opened the Uintah Valley to homesteading in 1905.[1] They could have a drawing, as the homesteaders had done. Boyden and Fleming said a drawing was not possible because the plans specified that there would be corporations.[2]

With each labored step through the drifting snow, Elmer remembered how every effort that he and the other members of the AUCU board had made to avoid the use of corporations had been denied. Why? Even after the mixed-blood Uintahs had approved the corporations during the railroading of Ab Harris at the meeting in November 1958, the United States still held the land in trust for the Utes until August 27, 1964;[3] and the Termination Act defined the AUCU board as the authorized representative having power to make decisions concerning management of the land until it was distributed. Elmer, Preston, and the other members of the AUCU board had not yet delegated their authority to the corporations. The authorized representative had not made a decision about land management.[4] If the board was the "authorized representative" in fact as well as name, why couldn't the board change the plans?

After the general membership meeting in November 1958, Elmer and Preston proposed again that they substitute a land drawing. Boyden replied, "You can't have peaches, you can't have pears, you can't have apples. You've either got to take peaches, pears, or apples, and the majority have decided to take the apples of the corporation."[5]

Boyden's analogy was a crude effort to be folksy—the tribal attorney customarily talked down to Indians but Elmer knew what he was saying: the plan could not be changed, even by the authorized representative, because the general membership had ratified the corporations.

Superintendent Fleming sided with Boyden. The BIA had the power to approve or disapprove anything the mixed-bloods proposed, and this power would continue until August 27, 1964.[6] The superintendent spoke for the BIA. Thus ended Preston's and Elmer's hope for a land drawing.

It seemed to Elmer on his cold walk that Boyden treated the idea of the corporations like his child: to reject it was a personal affront.

Art Workman had had no more success with another idea to avoid the corporations. At the November 1958 meeting with the bank officers, Boyden and Superintendent Fleming agreed that mixed-blood Uintahs living on assigned tribal lands, like Preston Allen, could take those lands and have their value deducted from their distributive share of tribal property. If their per capita distribution was not enough to pay for the land, they could borrow from First Security Bank, giving the bank a mortgage on the land as security. Art arranged for the same type of financing with a group of private investors, in an amount large enough to purchase the entire 172,000 acres. His backers would be secured by mortgages on the land, just like First Security Bank.

In a letter to Boyden in early January 1959, Art wrote,

> I am in the position at this time to make a cash offer at the appraised value of the entire block of land that was taken by the Affiliated Ute Citizens in the division. I am seeking outside financing which will enable me to do this, but other members are [also] seeking outside financing to enable them to buy their assignments and the only difference is that my offer is on a larger scale. My being a member of the Affiliated Ute Citizens gives me the same right as any member to purchase these lands, and it is of no great concern where I get the financing.[7]

Indeed, there was no difference, certainly not in logic or in law. Four days after Art wrote to Boyden, the AUCU board resolved to poll the membership on whether they wished to accept Art's plan whereby each person could take the value of his or her own share of the land and lease or buy the range or invest it elsewhere if they chose.[8] But the proposal ran into a roadblock in the person of Boyden. He would not allow Art to tamper with his corporation experiment. "I think there is a vast difference between [the] purchase of everything and an adjustment between individual members," Boyden fired back in his letter to Art only three days later.[9]

Because the corporations had already been formed, according to Boyden there was no longer any land to mortgage. Somehow, by lawyer's magic Art was unable to understand, the 172,000 acres, all of it held in trust by the United States and not yet conveyed to the corporations, had been converted to grazing rights. The shares in the corporations now represented AUMs, not land, according to the lawyer. A share in the cattle corporation entitled the owner to graze two and one-half cows, and a share of the sheep corporation entitled him to graze five sheep. How was Preston to graze half a cow? The notion was

ludicrous. Was he to send the front end out to range and keep the back end at his corral at Altonah?

The financial implications were bleak. Elmer could not afford to graze a mere five sheep. The entire Hackford clan would not be able to find enough range for the hundreds of sheep they owned. The cost of purchasing the shares, even with loans from First Security Bank, was an insurmountable obstacle.

"There was some squibble-squabble there," Elmer Hackford's brother, Richard (Dick), president of the cattle corporation, recalled, "but Boyden just told them mixed-bloods the dope: that there was no land involved."[10]

Elmer was no lawyer, and he could not understand how the land had disappeared any better than Dick or Art could. Obviously, the land was still there. Elmer was walking over it, on his way to check his sheep.

"A sale of all of the assets putting the corporations out of business cannot be accomplished by a mere majority vote," Boyden's letter to Art reasoned. "Once a corporation is formed, the minority stockholders have certain rights that must be recognized, and since the charter has actually issued, neither corporation has authority to dispose of all of its assets without the consent of its stockholders or a dissolution of the corporation."[11]

The fancy explanation did not really matter, for Superintendent Fleming had rubber-stamped Boyden's objection, just as former Superintendent Crow had quashed Preston's and Elmer's idea of a land drawing. Fleming told Art that the secretary of interior would not sanction such a transaction without first opening the land to bid by the general public.[12]

Even before Boyden sent his letter of explanation to Art, he presented the AUCU board with a resolution delegating their authority to the corporations.[13] The board reluctantly approved. They had no choice. The BIA could declare their authority transferred anyway.

Thus the uncertainties of nature faced by Elmer on his chilly walk were compounded by the uncertainties of termination. Elmer was unsure how, or if, he could continue to tend his sheep. Mixed-blood Uintahs would no longer be permitted to graze their sheep on the common range of the tribe in Antelope Canyon or on Hill Creek, nor could cattle owners use the range along the Uintah Mountains.

When Elmer Hackford reached the place where his sheep were huddled together under the snow, he was relieved to find them safe. He ran his experienced hand along each sheep's belly. Feeling for its ribs, he quickly calculated the weight and condition of each with an accuracy rivaling the scales at the livestock auction.

Elmer's ewes were heavy with lambs. He had sold every animal but brood stock, and he must have 150 percent regeneration of his small flock to offset expected yearly attrition. Even then, the wool at the spring shearing would represent his entire yearly profit. Operating on margins that slim, any loss to a coyote attack would mean financial ruin.

Walking back along the drifted lane, Elmer was confused. The Ute tribe was the only corporation most Utes had experience with. The Utes could not buy or sell their birthright, which qualified them as members of the tribe, but they would be able to buy and sell their stock in the new business corporations. If they sold their stock, they would also be selling their way of life, for the common range and common mineral estate would be all that was left after the secretary of interior proclaimed their termination in 1961.

## EXPECTATION

The next membership meeting of the AUCU was scheduled for March 7, 1959. There would be many such meetings during the ensuing months, conducted by Boyden and Superintendent Fleming to instruct the mixed-blood Uintahs in the operation of business corporations.[14] Assurances were given by Boyden and Fleming that the mixed-blood Uintahs could secure the range necessary for their animals.

At the membership meeting, they listened carefully when Boyden said, "There are going to be difficulties in operation on the range, and people will need real help. . . . People who will want to lease their shares can do so, but it will be impossible to make money on range deals unless they have stock to utilize the range shares." The members who ran livestock already knew this. "The smartest thing to do is sell [off your] stock certificates in the livestock corporations if [you] do not have stock to run on the range," he advised.

"If the Indians can't get financing individually," Art Workman inquired, "could they get a group loan with which to buy?" Art was thinking of his rejected proposal to purchase all of the land with outside financing. Could he accomplish the same goal by buying the stock instead of the acreage?

"We are to a point where we are operating on an individual basis," Boyden responded. "Of course, people could do it if they want to and can work it out, but it would be up to them."[15]

At a meeting of the AUCU board two days later, on March 9, 1959, Boyden repeated the same information: "After [Superintendent] Fleming advertises to the group, you can go sell to anyone."[16]

As Elmer and Preston entered the Legion Hall at another meeting of the AUCU board on April 7, 1959, they reflected on the advice Boyden and Fleming had given them. Much of Elmer's confusion during the February walk to check his sheep had already been dispelled by promises about how the corporations would work.

They should exchange shares, Fleming and Boyden had told the mixed-blood Uintahs. Bringing them together in membership meetings was designed to enable them to do just that. That way, Preston could get entitlement for another half cow from someone like Elmer, and Elmer could get the sheep entitlement that someone like Preston was unable to use. Without exchanges, no one in the mixed-blood group would be able to remain in the livestock business. Their entire entitlement, but the half-cow unit in particular, would be useless. Those not in the livestock business, like Art Workman and Liz Bumgarner, must be able to lease or sell their shares to those who were. Otherwise, the shares would be of no benefit to them at all.

Key to such transactions was a provision of the Termination Act that if any mixed-blood sold any interest in distributed property prior to the end of government restrictions on sale on August 27, 1964, "he shall first offer it to the members of the tribe."[17] The right was in legal fact an "option," but the mixed-blood Uintahs called it a "private treaty." What it meant was that they could arrange between themselves for the sale or lease of the grazing rights represented by their corporate shares. The idea, as Boyden explained it, was that "we are going to try to keep the corporations in the mixed-blood group," not "turn these people into welfare people."[18] The latter was certainly possible if the mixed-blood Uintahs sold their interest in the land, lived off the unearned income, and then became landless paupers.

Preston and Elmer quickly realized, as they took their places at the April 7 meeting, that there would be little chance to enter into private treaties. Only the heads of families engaged in the livestock business attended board or membership meetings, and they needed their shares for their own animals. Others were apparently not interested.[19] It would be difficult to operate the corporations with such apathy.

Preston called the meeting to order. There were many questions for Boyden and Fleming, questions that revealed the general confusion among the mixed-blood Uintahs. Boyden reviewed what he and Fleming had repeatedly said in the meetings of October 1958 through February 1959, when the corporations were proposed and organized.

Elmer started the discussion with the question uppermost on his mind. Now that the mixed-bloods were being excluded from the common range of the tribe, how would private treaties be arranged?

Boyden repeated the explanation he had offered in December 1958: "Those who want to sell or trade their shares in the corporations can do so by signing the certificates. When we get the cattle and sheep corporations set up, each individual can sell for cash or do as he pleases. Individuals can trade their shares in the cattle corporation for shares in the sheep corporation and vice versa. You can give your interest in your distributive share to get more shares in the cattle or sheep corporations."[20]

The requirement to make an offer to "members of the tribe" was defined by the regulations proposed for adoption under the Ute Termination Act.[21] Fleming explained that if there was more than one acceptance, or if no member accepted, nonmembers could then submit sealed bids in competition with the mixed-bloods. Those requirements were also written into the articles of incorporation. Preston observed that if there was a sale of stock outside of the mixed-blood group, the mixed-blood Uintahs' share of the range might fall into the hands of outsiders, either full-bloods or non-Indians, and there would not be enough range for someone like himself.

Fleming reminded Preston that a special membership meeting had been held on October 4, 1958, to explain that the bank would be responsible to see that each offer met the criteria defined by the regulations and articles of incorporation and otherwise assure that the transfers were properly made.[22] Furthermore, explained Fleming, the bank would not transfer any shares unless the superintendent gave the purchaser a certificate that "a proper offer, at a price and on terms specified in the certificate was made."[23] Thus both Fleming and Cowan would be sure that the mixed-bloods would have the first right to purchase any shares that were sold and that they actually got their money.

Boyden reminded Preston that he had explained to the AUCU board on January 12, 1959, that "after the stock is issued, the owners can do what they please except in the case of minors" but that each transfer must be "countersigned" by the transfer agent and "approved by the Superintendent."[24]

Why was it necessary to notify the superintendent at all? Why couldn't they just sell to whomever they chose? Boyden acknowledged at the April 7, 1959, meeting that some mixed-bloods who were not cattle or sheep people had already sold their stock to those who were. He explained that the requirement of approval by the superintendent and control of sales by the transfer agent was "to keep these corporations in the mixed-blood group."[25] There was no indication that private sales were improper, only that they must be approved.

Boyden and Fleming held more meetings during the following weeks and reassured the mixed-blood Uintahs that private treaty transactions would be allowed. "Can you still make sales by private treaty transfers?" Lula Murdock inquired on April 13, 1959. "Yes," Boyden replied, "you can make personal deals but they must be on a personal basis."[26]

Art Workman was concerned whether the shares would be of any use to those who were not members of ranching families. If he was required to sell to them for cash, he might not get a fair price. It might be necessary to trade his shares for personal services, produce, or other noncash items.

"Can the shares be traded, or must they be sold for cash first?" Art asked.

"Yes," Boyden assured, "it can be done. Let's find out what you want done."[27]

But financing had not been allowed when Art had proposed buying all of the land. At the November 1, 1958, general membership meeting, First Security Bank had agreed that it would make loans to the mixed-bloods. At that time Della Curry asked whether "stockmen could borrow money right away at the bank," and Wesley Dickerson, manager of the Roosevelt branch of First Security, replied, "Yes, we have loans now like this."[28] Would such financing be allowed for buying the shares rather than the land?

At a meeting of the AUCU Board of Directors in Boyden's office in Salt Lake City on January 23, 1959, Boyden and Fleming explicitly agreed that financing for the purchase of shares would be allowed. "The bank will be willing to finance some individuals in buying shares. Some could be mortgaged to take care of loans. The bank can work something out."[29]

The stock certificates had not yet been issued and would not be until the land was transferred to the corporations. The livestock operators must acquire rights to the range now, and those without animals wanted to sell immediately.

"Can we deal for the shares before the certificates are issued?" Art asked.

"Yes," Boyden replied. "An instrument can be drawn so negotiations can be made before the patent is issued. The way to do that is to execute a transfer assignment in which you say as soon as the stock is issued to me, I will sell the same to you." Boyden said he would draw up instruments to accomplish such transactions.[30]

When the mixed-bloods had presented plans of their own in the past, Boyden and former Superintendent Crow had said the BIA would not approve, and that ended the matter. Now, on February 23, 1959, Boyden and Fleming assured them that their plans for private treaties would be accepted. Fleming said he had just returned from discussions with Barton Greenwood, the acting commissioner of Indian affairs in Washington. "If Elmer wants to sell his share

and Liz and Lula want to buy, Elmer can work it out himself. The Bureau went along with me on this."[31]

Only a handful of mixed-blood Uintahs had attended membership meetings in December 1958 and January 1959 to trade shares. They were scattered over a large reservation, and many lived in cities far from the Uintah Valley. How could a prospective buyer find out who wanted to sell? There are "at least 150 who want to sell stock right now," Fleming told the board at the meeting in Boyden's office on January 23, 1959. He promised to "get a market together and to get cash for the ones who want to sell now."[32]

Many mixed-blood Uintahs acted on the advice they had been given. They traded sheep and cattle shares among themselves. Those not in the livestock business were willing to let family members have the shares for modest prices.[33] The record of representations by Fleming and Boyden illustrates that they had repeatedly instructed them to do so between October 1958 and April 1959.

The advice was comforting to Preston and Elmer, like the sunshine that had been streaming over Tabby Mountain and shimmering from the drifted snow through the windows of the Legion Hall on March 7, 1959, when the first in the series of meetings to educate the mixed-blood Uintahs on the private treaty had been held.

Elmer and Preston, along with Elmer's brothers Dick and Lewis, and Mac Murdock, Lula's son, were elected directors of the range corporations.[34] They embarked on the task of trying to manage the range corporations, despite the pressures created by so many sales, while Boyden and Fleming met with the AUCU board and its members during the spring and summer of 1959 to encourage the mixed-blood Uintahs to enter into private treaty sales.

Throughout calendar year 1959, Preston Allen, Elmer Hackford, and other ranchers and sheep raisers negotiated for the grazing rights of spouses, children, relatives, and friends. They did exactly as they had been instructed, dutifully filling out forms created and approved by Fleming.

Many of their private treaties were for modest sums. Sometimes no money changed hands. Mixed-bloods looked on private treaties that year as the best hope for survival for a family raising livestock. By the end of 1959, the private treaties negotiated by the Hackfords were enough to graze about one hundred sheep.[35] That was far short of the number they would need to make a living, but there was hope that they might acquire enough to salvage their operation.

In the fall of 1959, after the last of the meetings Boyden and Fleming held, Elmer Hackford drove to the Antelope range where his sheep were pasturing. As he took the dusty road along the Uintah River he saw the damage, still

visible, wrought by that late spring storm following Coyote's howl. The newly leafed trees had been bent into grotesque forms by the crushing weight of the wet spring snow. Many branches that should be reaching for the sun still dangled like leafy fingers clutching at the ground.

If Elmer had been superstitious, he might have wondered if it was Coyote inflicting this long season of damage. But the Utes were no longer superstitious, and Elmer put such thoughts out of his mind.

## DISAPPOINTMENT

Preston, Elmer, and the board could never have guessed the magnitude of the betrayal. Boyden had broken faith with them once when the assets were divided. Now, even before the Hackfords completed their private treaties in 1959, he broke faith with the mixed-blood Uintahs again.

While Boyden and Superintendent Fleming were advising the mixed-blood Uintahs to enter into private treaties they were simultaneously setting in motion events that would make private treaties impossible. The termination policy was falling into disfavor by 1959, and as it began to appear that the mixed-bloods' share of property might fall into the hands of non-Indians, Boyden resolved to try to secure the mixed-bloods' property for the tribe.[36] As events were pieced together years later by the AUCU board and their legal counsel, the betrayal began in January 1959 after Art proposed buying the land through private financing.

Rex Curry telephoned Boyden and asked, if Art Workman could purchase the land, or even the stock, merely because he was a mixed-blood, then why not the Ute Indian Tribe acting as an entity? Shouldn't the tribe have a preferred right to purchase any assets that were sold by the mixed-bloods? Curry reported that the tribe would like to have the mixed-bloods' share of the range, in addition to the 73 percent share they had already received.[37]

The problem, Boyden explained to Curry, was that Art Workman was asserting his rights as a *member* of the tribe. There was nothing in the Termination Act, or in the private treaty as it had been explained to the mixed-bloods, that extended such a right to the tribe itself.[38] In November 1956 the secretary of interior had in fact rendered a legal opinion concluding that "Tribe" was not included within the term "member of the tribe."[39] That opinion would prevent a purchase like the one Curry was suggesting.

But the private treaty right extended to the full-blood members of the tribe as well as to the mixed-bloods, Curry pointed out. Why shouldn't the tribe, as representative of the full-bloods, exercise the right of its members?

The individual full-bloods were included in the private treaty because they were to be preparing themselves for eventual termination. The private treaty was the means by which an Indian in either group could acquire a farm or ranch to support his family. It would be contrary to the goals of termination to permit the tribe to exercise the private treaty, for the tribe would cease to exist after the full-bloods were also terminated. To do so would revive the system of communal ownership that Watkins was determined to end. It would prevent the government from bringing the Utes, in both groups, into the American mainstream.

The discussion should have been over. Yet Boyden aggressively pursued the purchase of the mixed-bloods' share of the property for the tribe, even while he continued to meet with the mixed-bloods in his capacity as their attorney and advise that only individual members of either group had that right. The Ute Indian Tribe proposed, by the end of summer 1959, to purchase all of the 176,000 acres of land for cash. Curry was employed by the tribe as its business manager, so his allegiance to the tribe was understandable. But both Boyden and the BIA were obligated to protect the interests of the mixed-bloods until August 27, 1961, when the termination proclamation was to be published.

Ironically, the termination policy was only months away from death by strangulation. In November 1958 Utah voters refused to return Arthur Watkins to the Senate. Indian policy was changing again. Lewis R. Bruce, commissioner of Indian affairs for the lame-duck Eisenhower administration, was finally listening to the warnings of Indian leaders and had declared it "incredible, even criminal" to terminate Indians not prepared for it[40] and finally recognized the termination policy as a failure. The effects of termination had already strained relations between the mixed-blood Uintahs and the tribe. By mid-1959 the full-bloods found that termination was damaging to them as well as to the mixed-bloods. Most of the better-educated and more experienced members of the tribe, like Ab Harris, Bill Reed, and Julius Murray, were in the mixed-blood group, hampering business operations. Friction developed between the two groups and by late summer 1959 the tribe was refusing to let the mixed-blood Uintahs prospect for the jointly owned minerals on the share of the property held by the tribe.

Most serious, though, was the loss of the Rock Creek range, which had been assigned to the Rock Creek Cattle Corporation, out of the heart of the tribe's rangelands.

"To a considerable extent," Henry Cuch, chairman of the business committee indicated to the commissioner, termination has "crippled the operations of the full-bloods, due to lack of balanced range conditions."[41] The tribe wanted to reverse those effects. Boyden therefore resolved that the term "member of the tribe" must be changed to include "Tribe."[42]

Despite the recognition that termination was a failure, the BIA was evidently unwilling to abandon the experiment being carried out at the expense of the mixed-blood Uintahs. "Because of his [Boyden's] knowledge of the planning and his working relationship with this group, the loss of his guidance and assistance may tend to slow down the actions required to complete termination for this group within this calendar year," Homer S. Jenkins, chief of the Branch of Tribal Programs at the BIA in Washington, concluded in July 1959.[43]

Superintendent Fleming announced at a meeting of the AUCU on August 12, 1959, that he and Boyden were going to Washington on August 23 on the joint business of the terminated Utes and the tribe and that he wanted the AUCU to adopt a resolution authorizing Boyden to discuss various matters with the BIA, including section 15 of the Ute Termination Act. That was most significant, in the context of the discussions Boyden and presumably Fleming had been having with Rex Curry about the purchase of the mixed-blood range by the tribe, for section 15 required any seller to "first offer [the land] to members of the tribe." The AUCU must pay one-half of Boyden's expenses, Fleming said, for they would discuss "how sales are to be made from one Indian to another."[44] (Unbeknown to the board, Boyden intended to discuss *if* private treaty sales would be allowed and *if* there could be sales between Indians.)

Fleming had always acknowledged that the mixed-bloods constituted only 27 percent of the two groups and stated that "they should be willing to pay their 27 percent." Their joint expenses were always pro rated. Why should the AUCU now be required to pay one-half? The superintendent said that they "must," and the board reluctantly agreed.[45]

It took only three days of meetings (August 24–27, 1959) to break the promise that private treaties could be undertaken by the Utes. Minutes of those meetings between Greenwood, Boyden, and Fleming in the BIA's dingy Washington headquarters were not kept, but one meeting is described in a memo of Carl J. Cornelius, program officer.[46] Boyden quickly brought up the right of refusal contained in section 15 of the Termination Act for "members of the tribe." The proposed regulations of the secretary of the interior implementing the private treaties that the mixed-blood Uintahs had negotiated and been promised all during 1959 and for five years were circulated. There was no explanation why the topic should be discussed at all, or why Acting Commissioner Greenwood's earlier approval of the private treaty concept should be revoked. Fleming had plainly stated at the August 12 meeting, when the AUCU board authorized Boyden to go to Washington, that the

purpose was to get the regulations published, not to change them. The memorandum describing the meeting nevertheless states that "the Solicitor's office found they were not satisfied with the regulations as proposed," and Boyden reported later that "agreement was reached on the regulations which involved the incorporation of several items."[47] "They" must have referred to the tribe, or perhaps to Boyden, for the mixed-bloods had expressed no dissatisfaction. They were, in fact, demanding that the private treaty be given them, as promised, and were actively negotiating private treaties, approved by Fleming.

When the proposed revision in the regulations was circulated in the Uintah Valley, the AUCU board discovered that there was no longer any provision for the private treaty.[48] Instead, it was provided that "the Superintendent shall notify in writing . . . the tribal business committee of any offer of sale," even between family members.[49] If the tribe matched the offer of any individual, whether mixed-blood or full-blood, sealed bids would be required.[50] Henceforth, individual members in both groups would have to compete with the tribe for any shares.

When Area Director Haverland noticed that the private treaty had been omitted in the proposed regulations, he was puzzled. It contradicted the promise Acting Commissioner Greenwood had made only six months earlier. Haverland knew that the private treaty had been intended, in the language of the Meriam Report, to "prevent the rising generation of Indians from being landless and to stop the use of inherited money as a means of sustaining the Indians in a life of irresponsible idleness."[51]

Haverland was troubled that the change in regulations created the real threat that the harmful consequences of the allotment system were about to be repeated. He also subscribed to the quaint notion that solemn promises he had been a party to ought to be honored, particularly when made to those who would be the BIA's wards until August 27, 1961.

"It [the private treaty] was intended to provide for negotiated sales of land and corporate stock between members of the tribe," Haverland and George W. Hedden, assistant area director, protested in letters to the commissioner. "It was also intended to include gift conveyances from one member to another, but no provisions have been included for negotiated sales or gifts." They urged that the private treaty concept be restored.[52] There was no answer, and Boyden succeeded, with relative ease, in subverting the interest of the mixed-blood Uintahs for that of his larger client, the Ute Indian Tribe. The mixed-bloods could not comprehend Boyden's perfidy. On October 12, 1959, the AUCU board resolved that they would not renew Boyden's contract.[53]

Liz Bumgarner had expressed her uneasiness on October 6, 1959: "My personal opinion is that Mr. Boyden has done nothing to protect the interests of our people, but thinks only of making a big deal with the State for his own glory."[54] She had done so again in the joint meeting with the business committee on October 23, 1959: "Who is [Mr. Boyden] working for?"[55] In retrospect, and considering the record of Boyden's contacts with Curry, Liz seems to have been prescient, for neither she nor the directors then knew the extent of the conspiracy Boyden had launched against them.

The factionalism that had been exploited on the reservation for more than a decade—first with the share-and-share-alike amendment, then with the termination program itself—increased. By July 1959 the board demanded that the BIA reimburse the mixed-blood Uintahs for the expenses of termination. It was obvious that only the full-bloods had benefited.[56]

Other events, apparently innocuous, fall into place when read in light of the discussions going on between Boyden and Curry at the same time. When Art Workman had made his offer in January 1959 to buy all of the land, Boyden had responded, "If [the mixed-bloods] want to sell stock in the corporations, they must first offer to sell to the Tribe."[57] The board members may have dismissed the comment as a careless choice of words, assuming he meant "members of the tribe." The minutes clearly show that he did say "Tribe."

Boyden made that same apparent slip of the tongue on March 9, 1959, when he explained that the Uintahs could make private treaty sales, but "if you decide to sell for less you will have to come back and offer [the stock] to the Tribe for the lower price first."[58] Those listening to him would surely have assumed that he meant "tribe" in the generic sense, to refer to the members collectively. If not, it was of little concern. Fleming's approval was necessary, and he had not only indicated that private treaty sales between mixed-bloods would be permitted but had also assured the mixed-bloods that the commissioner supported his position.

In retrospect, Boyden's "slips" suggest that as early as Curry's January telephone calls, and possibly before, Boyden intended to acquire the mixed-bloods' lands for the tribe. That intent is confirmed in Cornelius's memo dated April 21, 1960.[59] Even as he counseled the mixed-bloods to enter into private treaties, Boyden was scheming to acquire the land for the tribe. Even as he pointed out that private treaties were necessary for the mixed-blood Uintahs to survive in the livestock business, Boyden went to the commissioner of Indian affairs to persuade him to prevent private treaties. The board would not learn

about this until 1979, however, when their legal counsel obtained the BIA records from the National Record Center.[60]

After the board declined to renew Boyden's contract on October 12, 1959, circumstances combined to leave him in place as the AUCU's attorney. Initially the AUCU proposed hiring George Morris, the attorney from Salt Lake City, but Fleming would not permit use of their funds to do so. Art Workman called Morris and asked him to meet with them for one day, then reported, "We cannot hire George Morris with Tribal funds unless you get a contract and have it signed by the Secretary of Interior." Desperately, Art suggested that they "pass the hat for money to pay him."[61] No one had that kind of money.

As late as August 3, 1960, when Boyden and Area Director Haverland met with the AUCU directors, Preston Allen again proposed hiring Morris as counsel for the Ute Distribution Corporation. "We have no objection whatsoever to your hiring Mr. Morris or any other legal counsel," Haverland said. "However, you have no funds to pay him. If he wants to work for nothing that [is] fine, or [you] could pay him out of [your] own pockets."[62]

Boyden remained as AUCU counsel by default,[63] still on retainer to the tribe, but he refused to talk with the board after August 1960. "He didn't feel like answering because he doesn't have a contract," Lula Murdock reported.[64]

The BIA had had no trouble finding money to pay Boyden. Now the AUCU could not get rid of him. Were the BIA people raising so many legal problems, at a time when they knew the Affiliated Utes had no lawyer to solve them, as a ploy to force them to rehire Boyden?

The three mixed-blood corporations, which by then had been delegated authority to make decisions concerning the land and minerals, faced the same dilemma. The BIA was unwilling to pay for another lawyer for any of them.

Colin Murdock protested to the secretary of the interior in August 1960, "We trusted him [Boyden] and relied upon him to protect our rights. It is my solemn and honest belief that this attorney is not concerned with Indian rights and should not be allowed to work for us—or any Indians. . . . [H]ow can one attorney honestly represent two groups in a division of the tribal assets and give each group justice, unless he gets one group to give in to the other, making them believe it is the only thing that can be done? Our attorney advised the people that did not have cattle or sheep that it would be better to sell out."[65]

Liz Bumgarner also recognized the impropriety of what was taking place and declared, at a meeting of the board on October 6, 1960, "The general membership should go on record as protesting the transfer of the lands to the corporations. The tribal attorney and the Superintendent have overstepped their authority."[66]

The affairs of the three mixed-blood corporations quickly fell into chaos. Tension between the mixed-bloods and full-bloods intensified during the latter part of 1959 and by December 28, 1969, the tribe directed Boyden to "compile all relevant material pertaining to the mixed-blood problem for a report to the Tribe . . . as to whether the Tribe has a cause for action."[67] Boyden never initiated formal legal action by the tribe, as an entity, against the AUCU, as an entity, or by the tribe against any individual mixed-bloods. He, Rex Curry, and officers of the tribe did participate aggressively in litigation against the interest of the AUCU and its members during 1960, 1961, and thereafter (see chapters 7 and 10) to defeat their rights as "members of the tribe" and secure those rights for the tribe.

Meanwhile, the new majority in Congress was becoming more sensitive to the Indian way of life. Termination was quietly abandoned as congressional policy in 1958 and was officially ended by the Kennedy administration in 1960.[68] The Menominees of Wisconsin and the Klamaths of Oregon secured amendments relieving them of the harmful effects of termination.[69] And during the week of January 18, 1960, a delegation from the Ute Indian Tribe went to Washington to seek reversal of the plans to terminate the full-bloods.[70] In 1964 the ten-year period allotted to prepare for termination would end. The BIA quietly abandoned plans to terminate the full-blood Utes, presumably at Boyden's request, without further legislation. Nothing was done to change the termination program for the mixed-bloods.

Preston Allen asked if relief could be obtained for the mixed-blood Uintahs. Boyden seemed unwilling to help,[71] so Preston sent a telegram to Fred A. Seaton, secretary of the interior:

> We . . . are hereby protesting any action taken by Ute Indian Tribe at this time, regarding any amendments to [the termination law] without the [AUCU] having been consulted as this law also pertains to us. We believe that if the Ute Indian Tribe is to have time on their long-range plan extended that we the mixed-blood group should be granted an equal period of time also before the termination proclamation is issued.[72]

By the spring of 1961, Elmer Hackford was no longer listening for Coyote's wail. He had had to sell his flock in 1959, for he could no longer justify the time and expense of caring for his sheep. The benefits that would flow from increasing his flock had been denied to Elmer and the entire Hackford clan.

# 7

# THE JAWS OF THE TRAP (SPRING 1960)

*The mixed-blood Indians had no prior knowledge of the content of the bill until it became law. They were then told what they must do or the Secretary of Interior would do it for them. The mixed-blood Indians were shocked, dumbfounded, and forced into submission. Like a herd of bewildered sheep they carried out the programs that were outlined for them. . . . They were not informed of their rights as members of the tribe or as citizens of the United States of America. Their rights as wards of the government were not protected. . . . This bill was based upon greed, prejudice, and resentment. . . . As a result of this law, homes and family groups have been separated. It has caused many full-bloods to hate the mixed-bloods.*

*Colin Murdock, ca. 1955*

By the end of January 1960, John Boyden's and Rex Curry's plans to acquire the mixed-blood Uintahs' share of the range for the tribe were taking shape. After Acting Commissioner Rex Lee agreed to change the regulations and caused the secretary of the interior to include the tribe in the private treaty, it was clear that the tribe would be able to purchase control of the two range corporations—at least if the approximately 150 private treaties mixed-blood Uintahs had already arranged among themselves with the approval of former Superintendent Fleming were voided.

On February l, 1960, however, an incident occurred which threatened to upset their plans. On that date Preston Allen and the AUCU board were contacted by Claude H. Heyer, field secretary of the Association on American Indian Affairs (AAIA). Heyer was a spokesman for one of the groups devoted

to protecting Indian rights, whose members were both Indians and non-Indians, which former Senator Watkins had accused of "com[ing] from the outside for the purpose of destroying unity."[1] Whether because of Watkins's resistance or the Uintahs' relative obscurity, Heyer was the first opponent of termination from the outside to contact the Uintahs.

Under the leadership of its president, Oliver La Farge, the AAIA had proposed an American Indian Point 4 Program in 1956, inspired by the Point 4 Program of the United States for underdeveloped countries of the world. The AAIA resolved on April 19, 1956, to be "an agency to assist American Indian Communities to reach the level of well-being enjoyed by other communities in the United States" and declared that "termination of Federal protection of Indian property or of any other Indian rights [should not be exacted] as its price"; that

> Indian culture and identity should not be restricted or destroyed; that technical guidance and financial assistance should be made available; that requests for assistance should come from the Indians after each Indian group has studied itself in terms of its own needs; that an impartial effort should be made to deal with the development of natural resources to maximum capacity, to develop the full capabilities of industrial and agricultural production, of improvements in housing, nutrition, clothing, sanitation, and health, and of the resettlement on their own initiative of individuals and families in other areas . . . and that older, revered values should be respected and used as new forms of living are introduced.[2]

"Indians should not be forced to pay for their rights as Americans by forfeiting their rights as Indians," the AAIA had further resolved, for "it should be left to the Indians themselves to integrate themselves at a pace controlled largely by their own readiness."

> First of all, we must extend to the Indians the principle of government by consent of the governed, laid down in the Declaration of Independence. This principle is acutely important for the Indians, because the courts are unanimously agreed that the Congress has plenary power over Indian affairs, and may legislate in derogation of treaties and other agreements. . . .
>
> We must discard the notion of the benevolent, paternal government handing to a primitive minority what that government, in its wisdom,

has decided is best for them. After all, that "Government," in practice, becomes one, two, or a handful of bureaucrats or members of Congress.[3]

"We fought termination pretty hard," Heyer said, explaining the AAIA philosophy to the AUCU board. "The guys over at the bureau office act like they are scared of me. Did you folks ever hear of [William] Zimmerman?" Heyer had only been with the organization since June 1959. "He was our field representative. Did he get around and talk to any people or did the Bureau get hold of him and he left without talking to the people?"

"If anyone came to the reservation they contacted the BIA or the business committee and had never contacted the Affiliated Utes," Liz Bumgarner explained. The Utes had effectively been prevented from listening to such voices for the six years since termination was first proposed. "Francis McKinley was appointed to meet with such persons and the BIA never allowed any of the Uintah Ute leaders to talk to them."

"Do you think maybe they are deliberately shifting superintendents on you?" Heyer inquired. "I have heard this."[4]

Lula Murdock explained that the Utes had had four superintendents during the termination period: Gilmore, Crow, Fleming, and now Fleming's successor, Martin M. Zollar. The constant change in superintendents, it could be seen, might have contributed to the government's broken promises. Fleming may not have been fully aware of Gilmore's and Crow's promises to keep the range in the mixed-blood group, and Zollar might not object to changing regulations he had not helped to formulate.

What Heyer said had Art Workman thinking again. With the aid of independent voices like the AAIA, perhaps the private treaty could be revived. There might be some chance yet to pursue his plan to purchase all of the land as a "member of the tribe." There might be some chance for Elmer and Preston to get the range they needed.

"This land deal should have been stopped," Art declared, thinking of the sealed bidding procedure that would be followed if the tribe did not meet the advertised price. "That lets outsiders get this land."

"Are there people in Utah after the land that is left?" Heyer asked.

"Yes," Preston replied. "There are an awful lot of non-Indian people after this land and they are sitting like vultures waiting to get it."[5]

Heyer suggested that the mixed-blood Uintahs litigate their grievances. His organization might help. The meeting then adjourned and Heyer left the reser-

vation. From the written record, it appears there was no further contact by the AAIA or other independent Indian voices.

## FRIENDLY GUIDANCE

It was apparent that if the AUCU board was allowed to listen to people like Heyer and if they secured an independent lawyer, Boyden's plans—going back to the beginning of the termination policy in 1953 and rooted in the share-and-share-alike amendment of 1950—might come unraveled.

If there was a challenge on the grounds that the plan for distribution of assets was controlling, as Boyden and the superintendent claimed when they refused to have a land drawing, the secretary of interior might be unable to eliminate the private treaty. Was Boyden afraid of the AUCU litigating that question? Did Boyden want to block the investigation by disinterested outsiders that the mixed-blood Uintahs had been demanding for some ten years and were discussing with Heyer? The AUCU, as authorized representative, might get the regulations changed. If the private treaty was reinstated, or even if the existing private treaty purchases were recognized, Boyden's plans to acquire the mixed-blood lands for the tribe would be defeated.

By 1960 Curry and Boyden realized that the portion of the tribe's common assets going to the mixed-blood Uintahs, even after the disproportionate division imposed in 1958, was so large that the economy of the tribe would be damaged. Control over the resources of the reservation was threatened.[6]

The best way to prevent such consequences was for Boyden to be reappointed attorney for the AUCU. Preston Allen and the board had been without legal counsel since the fall of 1959 when they refused to renew Boyden's contract. But at the next meeting of the AUCU board on February 8, 1960, Boyden and Curry were both there, and Boyden proposed that they rehire him.

"If I were representing the mixed-bloods, I would go back to Washington and see that it is all done," Boyden assured the board. "You had better do something specific for getting these things worked out," he half-threatened.

Such a solicitation was extraordinary by any standard and flatly prohibited as unethical by the legal profession. Perhaps more ominous for the mixed-blood Uintahs, it appeared to be in direct response to their meeting with Heyer.

Boyden pressed his solicitation by presenting a laundry list of legal tasks he said must be performed. "I am willing to take a short-term proposition on this, to help you out," he said. The directors were still not aware of the extent of Boyden's betrayal, but they hesitated at his offer. Art Workman and the three

mixed-blood corporations were still trying to get George Morris to talk to them. They took no immediate action on Boyden's solicitation.[7]

When Preston reconvened the AUCU board on February 19, 1960, bigger guns were marshaled in support of Boyden. Area Director Haverland and the new superintendent, Zollar, were both there. They stressed the very problems the tribal attorney said made it important that the Affiliated Utes rehire him. The board made no immediate decision, but Preston again felt like a mouse being pursued by his mongrel dog. After the noon recess, the AUCU board resolved to write to George Morris "and ask him to return all material that was given him."[8]

Boyden reappeared at the meeting on March 8, 1960, determined to settle the issue then and there. He brought a complex agreement designating himself as attorney prepared for the board's signatures.[9]

Art Workman objected, "It looks like we are paying you more than our proportionate share." Boyden reassured the board that he would be working solely for the mixed-bloods, for they were paying for his services. Any services on matters that would benefit both groups were "lumped in."[10]

The board knew by then of Boyden's conflict of interest, yet they felt they had no choice. They desperately needed an attorney. The BIA still had the power to dictate their choice—Boyden. A resolution to hire Boyden as legal counsel carried 5-0, despite the objections Preston, Liz, and Art had expressed earlier and despite their attempts to hire George Morris.[11]

Boyden immediately rejected once more the idea of dissolving the corporations and allowing the Uintahs to take individual tracts of land.[12] At the February 19, 1960, meeting the BIA had refused that request on grounds that it was the trustee of the land until August 27, 1964. The board asked if the corporations could be dissolved. Haverland responded that "it could be possible" but that he doubted he or the department would agree. In any event, there would be no sale of the corporations until the secretary of interior gave his approval.

"Supposing we got a sale for these corporations that would amount to appraised value or a little more," Art Workman asked. "Would you or the Superintendent approve the sale by the minors?"

"No, that is where the trustee comes in," Haverland said. "Until stock is issued in the corporations, it is held by the group as an undivided interest and is subject to the Secretary's approval."[13]

There was no reason Art's or Elmer's proposal could not be considered. But the superintendent, whether it was Fleming or Zollar, always took the position that the board was locked in by the plan for distribution when the members tried to make their own decisions or to reject a proposal of Boyden's,

instantly taking the opposite position when the issue was protecting something important to them, like the private treaty rights. Their proposals were rejected then because the BIA, acting as trustee, would not approve.

Boyden thus succeeded in getting himself reinstalled as the representative of the AUCU; and George Morris, like the lawyer from Vernal whom Old Jim Atwine had tried in vain to employ for the Uintahs when the termination resolution was being forced on them, or Clayton Simmons and John Beaslin, whom the board had tried to hire, was prevented from "intruding" into mixed-blood affairs. Despite every effort to secure effective counsel of their own choosing, counsel not beholden to the tribe or the BIA, the mixed-blood Uintahs found themselves securely within Boyden's grasp as the summer of 1960 approached.

## CHANGING THE RULES

Once reinstalled as lawyer for the AUCU, Boyden used his position to quell attempts by mixed-blood Uintahs during the spring of 1960 to avoid sale to the tribe. First he quashed efforts of the AUCU board to revive their private treaty rights.

"There have been substantial changes in the proposed regulations," Boyden announced. "They will have to be republished, so you can go ahead with the next step of getting them adopted." The "substantial changes" were the deletion of the exclusive private treaty for "members" and requiring an offer to the tribe.

Next, Boyden insisted, "We have got to stop this subterfuge in the buying of the stock. The stock in all three corporations should be placed under the trust with First Security Bank."[14] The "subterfuge" Boyden referred to was Art's attempt to obtain financing so that he could exercise private treaty rights. Art was open and frank, however, and his proposal was surely not a subterfuge. Moreover, Art's offer served their interests better than Boyden's experiment with business corporations.

Furthermore, Boyden's "solution," to place the corporation stock in the bank's trust department, was a problematic one. The fact was that there was no trust with First Security Bank, at least not yet. Boyden, former Superintendent Fleming, and the bank had proposed a trust, and Preston knew that Boyden was negotiating with Ralph Cowan, but the board had not approved it. The BIA was guardian and could take such action for the individual mixed-blood Uintahs prior to August 27, 1961, when the termination proclamation was to be published, but the Termination Act assumed that the mixed-bloods were preparing

to manage their own affairs and the board was supposed to determine whether a trust would be created.

Both Boyden and the BIA appeared to act in the tribe's interest. If the private treaty concept was revived, the tribe would lose the leverage to force the mixed-bloods to sell it their stock. Yet Boyden and the BIA certainly recognized that the private treaty was included in the plan for distribution, to protect the mixed-blood Uintahs against outsiders. The tribe was certainly an outsider in the sense that the Termination Act intended to end the special relationship of all Utes, both mixed-blood and full-blood, and thereby effectively end the existence of the tribe.

The board repeatedly challenged Boyden and Area Director Haverland on the issue in February, March, and April 1960.

"The law says that if you sell your shares of stock, they must first be offered to the members of the tribe," and not the tribe, Preston challenged Haverland on February 19, 1960.

"Supposing we got a sale for these corporations that would amount to appraised value or a little more," Art inquired. "Would you or the Superintendent approve the sale?"[15]

"Let me see what proposition I can make with the Tribe," Boyden said on March 8, 1960, "and then we will consider it and all offers."[16]

"Even though you are not required to sell to the Tribe, it is the policy to require an offer to the Tribe," Boyden then declared at the meeting on April 11, 1960, repudiating his prior instructions that they could buy and sell among themselves and that the purpose of the private treaty was to keep the stock in the mixed-blood group. "There is an official situation on this in the Indian office."[17]

Preston and Elmer continued, nevertheless, to insist that they had a preferred right to purchase the corporate stock, to the exclusion of the tribe. Art pursued his plan to obtain financing and pay more than the appraised price.

Boyden appeared to agree that all competing offers would be considered during the spring of 1960, even if he did not recognize that the mixed-blood Uintahs had a preferred right. But by May he apparently had different ideas and resolved to *require* a sale to the tribe. At that time Boyden announced that the board must send representatives to accompany him to Washington, D.C., to sign agreements concerning the Utes' claims pending against the United States. Preston Allen and Art Workman were delegated to go.

When they arrived in Washington on the Thursday before Memorial Day 1960,[18] it seemed that a show was being staged for them.[19] The skill Boyden displayed was amazing. It seemed that everyone accorded him the utmost

deference and that he was orchestrating the decisions of the Department of Justice, the BIA, and all other interested parties in a way George Morris would be incapable of.

On May 25, 1960, Boyden negotiated an agreement for the payment of $7.7 million to the Ute Indian Tribe, mostly for the Uintahs' losses at the time of the Treaty of Spanish Fork. That money might have been the Uintahs' alone; but under the share-and-share-alike amendment, both it and the reservation lands must be shared with the other two bands. Then Preston and Art were obliged to follow Boyden, like obedient puppies, while he looked after the myriad other legal matters that he had told the board needed attention.

Despite Boyden's insistence that any shares sold must first be offered to the tribe,[20] Preston and Art continued to insist that only individual "members" of both groups had that right. Boyden therefore took them to the BIA in Washington, where they were convinced that the policy was as Boyden had explained it.[21]

They followed Boyden into the office of Rex Lee, deputy commissioner of Indian affairs, at BIA headquarters on 19th Street and Virginia Avenue. Boyden led them in the back way, as if he were entering his private quarters. To their left was the massive stone building housing the Department of Interior, parent to the BIA and trustee of their land, even though the BIA was in the process of abandoning the mixed-bloods like orphaned children to a new trust arrangement with First Security Bank. Once inside, they were again impressed with how the BIA employees were on a first-name basis with their attorney. Even Lee treated Boyden with deference.

After they were introduced, Preston and Art sat in wobbly chairs in front of Lee's desk, nervous in the presence of, as far as Indians were concerned, one of the most powerful men in government. Preston explained the long-standing interpretation of the Department of Interior, confirmed by the formal legal opinion of Franklin C. Salisbury, the department's assistant solicitor for Indian affairs, that "member of the tribe" meant exactly what it said—the individual members and not the tribe itself.[22] He also explained that for six years the mixed-bloods had been instructed by Boyden and former Superintendent Fleming that they should enter into private treaty transactions.

Preston and Art were stunned when their own lawyer argued against them. Boyden dismissed the Salisbury opinion as uninformed, authored by a young lawyer less experienced than himself, and stated that his interpretation should control because he was the author of the Termination Act.[23] In Boyden's view, what the members of the tribe could do individually, they could also do collectively. Therefore, the term "member of the tribe" should merely be interpreted

to mean "and the Ute Indian Tribe." The deputy commissioner agreed with Boyden.[24]

Preston was incredulous. He knew that in the movies lawyers played games with words, changing their plain meaning to ordinary people, but he had never realized that it happened in real life. They had gone to the meeting the beneficiaries of a preferred right bestowed by Congress and confirmed by a formal legal opinion of the solicitor for the Department of Interior, but now it was changed so that their right must be shared with a purchaser whose resources were so much larger than their own that they would be unable to compete for shares.

Leaving the same way they had come in, Preston and Art were in awe of the splendid stone building on the opposite side of the BIA offices from Interior, built for the Federal Reserve Board and named for its chairman, George Eccles's brother. Eccles's bank would be something like a foster parent to the mixed-blood Uintahs when the trust agreement was completed. On the walk back the fragrance of cherry blossoms was dulled by their apprehension about the future prospects of the Uintahs.

## NOTHING FOOLISH

There were still more obstacles to Boyden's scheme to acquire the mixed-bloods' range for the tribe. Commissioner of Indian Affairs Glenn Emmons had imposed difficult conditions on purchase by the tribe. He had stipulated that the tribe could make such purchases only at their "appraised" value, and "only if controlling interests in the corporation can be purchased."[25]

There was no way to assure that "control" would be acquired before the first purchase, for the stock was owned by 490 separate shareholders. Moreover, there was still the matter of the approximately 150 private treaty sales, some of which had the written approval of former Superintendent Fleming.[26] Thus Boyden was contemplating ways to achieve the multiple goals of voiding the private treaty sales already consummated, preventing purchases at more than appraised value, and assuring that the tribe would gain "control."

Boyden asked the AUCU board to meet with him at his office on June 22, 1960.[27] At 1:00 P.M. on the appointed day his secretary ushered the board members in. They took their seats before the lawyer's desk, waiting to learn why they had been summoned. It seems that Boyden was concerned because, although he had been rehired by the AUCU, the three mixed-blood corporations were still determined to hire George Morris.

Small, quiet-mannered George Morris was fifty years of age and had an undistinguished law practice. There was no reason for Boyden to fear Morris, for he would likely be overmatched in any controversy with a lawyer of Boyden's skill and reputation. Morris was a man of integrity, however, well regarded by his peers, who could surely give the corporations sound advice.

The three corporations had secured Morris's agreement to serve without pay until they had funds for legal services.[28] Morris's involvement might prove fatal to Boyden's plans, for it was the mixed-blood stock that Curry and Boyden wanted to purchase for the tribe, and the corporations controlled the transfer process. The corporations might disagree with the interpretation the tribal attorney had persuaded the BIA to adopt which permitted the tribe to purchase the stock. They might also recognize the many private treaty purchasers, which would prevent the tribe from gaining control.

"You will just have to keep abreast of these things," Boyden counseled the board. "You will just have to keep your eye on it and see that nothing foolish is done."

Boyden urged that they write to the secretary of interior asking that he refuse to approve Morris's employment. "Tell him that I am already being paid and there is no reason to go and pay someone else," Boyden said. "They [the three corporations] can't pay a lawyer. . . . [T]hey have no money to pay a lawyer. The Secretary of Interior has the money before termination." Boyden then remembered that Morris had agreed to work without pay, at least until the termination proclamation was published and they were free of BIA control.

"I particularly want to draw the minutes to support those big judgments. The stuff that George Morris doesn't know anything about is what concerns me.

"In a sense this is Affiliated Ute business," Boyden continued, usurping the affairs of the corporations that had refused to employ him. "It is not my problem that the corporations have hired George Morris" Boyden said, as if any Indian entities that refused to employ John S. Boyden thereby lost the right to act with respect to their own property and shareholders.[29]

Discussion then turned to the tribe's offer to buy. Boyden counseled that to prevent outside speculators from paying more than the appraised price, the board should send a letter asking the mixed-bloods if they would sell to the tribe.

As Boyden spoke, Preston's gaze took in the Indian artifacts about the office and on its walls. Gifts, no doubt, from the many Indian clients Boyden represented. A multicolored rug was displayed behind where the lawyer was seated. The Navajos, who created treasures such as these, were the ancient

enemies of the Utes. Even in modern times Utes and Navajos remained bitter rivals. Flanking the Navajo rug were finely crafted Hopi Kachinas. They were even greater rivals of the Navajos. The modern Hopis were resentful of Navajo encroachment on the traditional Hopi lands, even threatening the Hopis' sacred Black Mesa.[30]

How could Boyden represent so many Indian groups, with their intense rivalries? How could he protect the interests of one group without subverting the interests of another? And now, despite their every effort to avoid it, he was installed by the BIA as the representative of the mixed-blood Uintahs. Despite the rivalries between the Uintahs and the Colorado Utes created by the share-and-share-alike amendment, or those that were implicit in the division of assets between themselves and the tribe, they were represented by the same lawyer. Had these other Indian groups also been forced to hire Boyden?

"Put in the letter that it now appears we cannot operate this resource because there aren't enough people who will keep the stock, so we are sending you this letter to ask you if you would be willing to sell to the Tribe." To make sure it was worded exactly as he wanted, Boyden dictated the letter to his secretary. When she finished typing it, he handed it to the board for signature.

"Why send this letter out?" Art demanded as he read what the tribal attorney had written. "I thought we were going to sell to the highest bidder."

Art knew that Deputy Commissioner Lee's interpretation of the term "member of the tribe" had eliminated his preferred right as a purchaser, but he expected that the mixed-bloods could still meet the advertised price and bid against the tribe in the sealed bidding procedure. With that understanding, he had continued his efforts to secure financing.

"I have a bid on this thing for $500,000," Art announced.

Boyden would not consider Art's proposal. "You cannot bid for anyone else," the attorney declared. Only his proposal to sell to the tribe, bidding for its members, would be considered.

"The corporations will say we are sticking our nose in corporation business," Liz Bumgarner objected.[31] Boyden brushed Liz's objection aside. The corporations had no shareholders to authorize any action, he said, because he was holding all of the stock certificates in his office. Exactly what authority he had was never indicated, for George Morris, not Boyden, was now attorney for the corporations.

## STEADY HANDS IN CONTROL

Lula Murdock did not attend the next meeting of the directors after the letter dictated by Boyden was sent. She knew there would be trouble. Preston

Allen was at his ranch branding cattle, after which he must drive them to the Rock Creek range for the summer. It was therefore Art Workman's misfortune to preside at the AUCU's stormy meeting on June 28, 1960. Mac Murdock burst in as the board conducted routine business at the Legion Hall.

"How can you maintain that the sheep corporation don't have any authority to function or operate? How can you say we don't have no jurisdiction of any sort?" Mac demanded. "And where did this Board of Directors get their authority to ask our shareholders if they wish to sell?"

"We met with Mr. Boyden and the letter we sent out was under his supervision," Liz explained.

"The Secretary of Interior says this board had no authority to delegate to the various boards," Art added.

Boyden's letter, it became clear, was self-fulfilling. The shares were held by Boyden and rendered useless by the denial of the private treaty, and Zollar, who was now superintendent, would not allow the AUCU to spend money to manage the range, making it impossible for the corporations to operate.

"We cannot even move any sheep on the corporation lands," Mac observed.[32]

The situation was hopeless. The mixed-blood Uintahs had been treated like the artifacts adorning Boyden's office walls, mere pawns to be manipulated in the accomplishment of his designs. The affairs of all three groups collapsed in chaos.[33]

"There is no use fighting among ourselves," Mac said, recognizing that the BIA and Boyden were exploiting the friction between them.

The scene reminded Liz of the game her children were playing as she left home to attend the meeting. Craig, her nine-year-old, was getting the better of Marlene, his older sister, in a game of Old Maid, so Marlene simply changed the rules so that she always won. The way Boyden and the BIA had manipulated the meaning of "member of the tribe," the mixed-blood Uintahs' right to legal representation, and now the legal status of the corporations they had forced on the mixed-bloods, was indeed much like Marlene's game with Craig—or like Humpty Dumpty declaring, "When *I* use a word, it means just what I choose it to mean—neither more nor less."[34]

"You people should take the question to the Secretary of Interior," Liz suggested to Mac as the meeting adjourned. But Liz knew that there was no hope.

## NO OUTSIDE FINANCING

Bickering among the mixed-bloods, intensified by the constant change in policies, continued. On July 12, 1960, Elmer Hackford's brother Callie showed up at a meeting of the board.

"Why can't I pay more than the appraised amount for the stock in Rock Creek and buy the stock instead of the tribe getting them?" he demanded. "If the tribe does buy this and a few people are still in, how do we know what land they will give them to run their animals on?"[35] Neither the directors nor the BIA officials in attendance knew why Callie could not make a better offer, or why the mixed-bloods must be limited to the offer of the tribe.

The mixed-blood Uintah livestock operators met to consider what Callie had in mind. The "appraised price" the tribe was proposing to pay did not reflect the true value, Callie reasoned.

"That was for incorporation purposes only, the way we understood it," Elmer explained.[36] Boyden said they must establish a value for Utah corporate tax purposes.[37] The value thus established was a mere $2.85 per acre, an average and surely not the market value.[38]

"This appraisal was prior to the incorporation and was never intended as a fair market valuation, and anyway it is obsolete," Preston agreed.[39]

Both Preston and Elmer had been involved in the division. Boyden and the BIA had told them the shares could not be converted into real property and the lands were divided according to forage value, or AUMs, not market value.[40] The value arbitrarily fixed for forage was much less than the market value of the land.

Callie was correct for another reason. The shares were an element of and related to the value of their livestock operations, not to the value of the forage. Without it they could not remain in business. The situation was more comparable to that of a prize bull, whose value is determined by breeding potential, not by the price of meat.

Another thing troubling Callie was that he, Preston, Elmer, and Mac Murdock were officers of the range corporations. It was their obligation to see that the shareholders, including those who had no livestock and no concept of the value of range to a ranching operation, were dealt with fairly when they sold their shares. It was determined that Callie, as spokesman for all of them, would seek financing with which to purchase the shares in competition with the tribe. Callie contacted Delta, Utah, attorney Thorpe Waddingham, who represented businessmen in Arizona willing to guarantee over $400,000 with which to purchase the range shares. The livestock operators were to pledge their own shares as security for the transaction, as they would do if they financed with First Security Bank, subject to a reasonable rate of interest.[41]

Like Art Workman, Callie was seeking outside financing, but his plan was different. He was proposing purchase of the shares, rather than the land, and for the very purpose contemplated by the requirement of an offer to "members of

the tribe"—to enable individual Indians to acquire grazing rights that could be operated economically. There was no "subterfuge" in Callie's proposal. The individual mixed-bloods were still "members," even after the private treaty was changed to include the tribe, and could still accept offers to sell. If both Callie's group and the tribe accepted, sealed bidding would be required and competition would determine what price the market would bear.

Calvin Hackford was a livestock man, not a stockbroker, but his proposal demonstrated a simple truth obvious to any investment banker. A single, large, and well-financed purchaser, such as the tribe, dealing with a large number of small and poorly financed sellers, which the 490 individual mixed-bloods were, could easily control the market and set the price. Callie's proposal added a well-financed competitor to support the seller's side of the market—an underwriter, in effect, such as is employed in regular securities markets.

Conversely, Commissioner Emmons had conditioned his approval for the tribe's purchases on acquiring "control" and doing so at the "appraised" value. The tribe must therefore have the advantages of purchasing stock at distressed prices and be relieved of competition from other purchasers.

Mere change of the private treaty to include the tribe as a purchaser was not sufficient to defeat Callie's plan. He was proposing to pay *more* than the appraised value. If Boyden and Curry were to accomplish their plan to purchase the mixed-blood Uintahs' share of the range for the tribe, it would thus require elimination of possible competition from someone like Calvin Hackford.

Area Director Haverland's objection to the change in the private treaty was another obstacle. Haverland took the position that the regulations would have to be changed before the tribe could be permitted to purchase stock in competition with the mixed-bloods. Even if that were done, the BIA might be involved in litigation, Haverland warned, for the superintendent had instructed the mixed-bloods that they not only had the right to make private treaty purchases, but must do so if the stock was to have any value to them. And he had approved about 150 private treaties.[42]

Boyden therefore took one final step, which avoided Haverland's objections, ended Callie Hackford's plan, and guaranteed that the range stock would be sold to the tribe.

"We have enough difficult problems to work out without being embroiled and entangled with technical definitions," Boyden wrote to Deputy Commissioner Lee on August 16, 1960. "If you can give us a hand at this time it would be greatly appreciated." He then instructed Lee: "If there is any question about the authority of the Ute Indian Tribe to make the purchase of the lands or stock in the corporations the regulations should be amended forthwith. On the other

hand, if the Solicitor feels that an offer to the tribe is an offer to its members, an opinion to that effect should be obtained immediately." The letter was marked "personal," for expedited delivery.[43]

Deputy Commissioner Lee obliged. On August 24, 1960, the secretary of interior sent Haverland a telegram requiring him to drop his objections. The interpretation consistently explained to the mixed-bloods for so many years and confirmed by Assistant Solicitor Salisbury's formal opinion was in error, the telegram said, and "the rights of the members individually extends to them when any number of them are acting collectively."[44]

The secretary of interior thus made official the position that Commissioner of Indian Affairs Emmons had taken with Art Workman on June 27, 1960: "an offering in accordance with the act is to be made *with the right of the Ute Tribe to meet the high bid.*"[45] The letter of the secretary of the interior also confirmed Rex Lee's decision, as requested by Boyden.

Callie met with his backers.

"Have you secured purchase?" Thorpe Waddingham asked.

"No," Callie had to admit, "not at the present time."

"Why not?"

"The Tribe come back and made an offer of $1,100. This is where our complications set in on our end of it. The Tribe has a right to meet this bid."

What happens now? If they have a right to come in and meet the bid, this could go on for quite some time."

"Yes," Callie agreed, "it could go on for some time."

"Well, my clients can't commit to such a deal. We must have the stock, to secure the owners of this money. We can't tie up our money indefinitely, with nothing for security."[46]

It was clear that the new twist in BIA policy was fatal.

## FORCED SALE TO THE TRIBE

In mid-August 1960, Rex Curry was seated in his business manager's office in Fort Duchesne, contemplating one final attempt by a mixed-blood Uintah to purchase shares in the range corporations. This latest effort bore prospects of success, even under Boyden's redefinition of "member of the tribe" and the secretary of interior's directive that the tribe be allowed to accept any offer to sell.

"I am a part-blood Ute Indian," Margaret Sprouse's letter read, "and I am prepared to make you absolutely the best offer available for your stock."[47] Mrs. Sprouse offered to purchase the stock of any mixed-blood for *more* than the

"appraised value" the tribe was authorized to pay. She had already negotiated the purchase of sixty-six shares of stock[48] while the tribe had yet to purchase a single share, and her offers had pushed the price above the amount the tribe was authorized to pay. If Margaret Sprouse, or any mixed-blood, was permitted to make such purchases, the tribe would never be able to secure control.

Margaret Sprouse, a mixed-blood Uintah, twenty-four years of age, was married to a non-Indian. She and her husband were in the sheep business. She was anxious to acquire the shares for her own use and was willing to pay whatever the market would bear.[49] She was doing so, moreover, on the advice that former Superintendent Fleming and Boyden had given on March 7, 1959: that she should purchase the shares from fellow mixed-bloods as a "member of the tribe."[50]

Nipping this most recent challenge would be a difficult task, for it would require ending, once and for all, the notion that any mixed-blood would be permitted to purchase. Mere semantic games would not be enough. It would now be necessary to go the final step and declare what Curry and Boyden had intended all along—that the Ute Indian Tribe, and no one else, would be allowed to purchase.

Curry had been on the telephone, discussing this latest crisis with Boyden. He looked at the letter Boyden had suggested be sent by the tribe.

"The Ute Indian Tribe wishes to protest the acceptance made by the mixed-blood member as being outside the spirit and intent of the law," the tribal attorney directed that the letter say, because "the Tribe is familiar with the financial status of this member and is confident that these acceptances represent non-Indian interests."[51]

It was true that neither Margaret Sprouse nor any mixed-blood Ute had the large amount of cash necessary to make the purchases she was proposing. But Margaret Sprouse, unlike either Art Workman or Callie Hackford, had no need for outside financing. She was married to one of the best-financed sheep men in the Uintah Valley. They had ample resources to make the purchases, and the shares were being acquired for use in their own livestock operations. If one in her position could not purchase, then no mixed-blood could.

The BIA had permitted the tribe to purchase shares only if it was able to purchase *control.* The proposed letter Boyden and Curry had composed was intended to secure that requirement. Rex Curry summoned the chairman of the Tribal Business Committee, Ouray McCook, and instructed him to submit the proposed letter to the BIA.[52]

The tribal attorney would use his influence to assure that the letter had its intended effect. He would do so despite the fact that the contract installing

Boyden as the attorney for the AUCU and approved by the commissioner of Indian affairs specifically provided "that should [there be] any dispute involving a conflict of interest between the Tribe and the Mixed-Blood Group that may not be amicably adjusted between them, the Attorney will represent neither of said parties upon the matter in controversy"[53]—and despite the fact that such a dispute had already arisen.

"It is the responsibility of [the] BIA to institute an investigation to determine whether the proposed acquisition of the stock in the two corporations by Mrs. Sprouse is in conformance with the termination act," Boyden insisted to the BIA. "In the event the Secretary of Interior does not deem it necessary to conduct an investigation, I feel that I can furnish enough information to show that the mixed-blood member is buying the stock for non-Indian interests."[54]

Thus even before any investigation had been initiated, Boyden had already determined the outcome. Henceforth the tribe would succeed to the preferred right originally promised to its members. The Uintahs, by contrast, would be relegated to the status of outsiders, unable to purchase their own property. And thus were the affairs of government conducted for its Indian wards during that summer of 1960.

# 8

# IN FATE'S GRIP (FALL/WINTER 1960)

*It does not grant a man freedom or equality to deprive him of his rights. It does not make him a better American to destroy his community and break up his traditional organizations. . . . Consultation with Indians, followed by utter disregard of their wishes, is a mockery. So, too, is consultation accompanied by coercive pressure. . . . Government by consent of the governed is not an alien doctrine. It is a measure of the genuineness of our democracy. It is at the heart of the many issues which the American Indians face, and is an element by which the whole world will judge us.*

*Oliver La Farge, November 10, 1955*

Reggie Bumgarner advanced with a succession of short hops to the cottonwood pole at the center of the lodge, elbows tucked in at his sides and forearms extended straight in front of him. He was one of many young men, advancing in dancing leaps of perhaps three inches, feet together, knees slightly bent and torso erect, in paths their bare feet had beaten into the parched ground. They gestured to a fork some twenty feet above them on the center pole. When they reached the pole, they seemed to drink from its Great Medicine Above, then withdrew, only to advance again.

Naked except for a breechclout, Reggie was painted black, his identity nearly indistinguishable. The dancers' vigorous hopping movements were in cadence with the pounding of a big drum to the south of the entrance of the huge lodge. They chanted incantations in Ute to Wolf, the wiser and older brother of Coyote. Plumes dangled from their little fingers, and eerie, melan-

choly notes from whistles in their mouths, carved from the wing bones of the eagle, pierced the stifling, dust-choked air.

The Lodge of the Great Mystery, as it was called, was more like a stockade. The heat of the sun at its summer solstice, radiant in the cloudless sky, beat down through the open beams forming its roof. Rivulets of perspiration coursed into the dancers' eyes, down their faces and over their bodies. Their breechclouts were heavily stained with the mixture of sweat, pigments streaming from their bodies, and the fine dust rising from the pounding of their feet on the dirt floor of the Lodge of the Great Mystery.

Reggie adjusted the wreaths of willows about his head, waist, wrists, and ankles and stumbled to the shade of the wall of boughs surrounding the lodge. There, in a small compartment lined with willows, his personal items were arranged. He rested on his robe. The faces of the young men were anguished and drawn from three days of fasting. Some had become delirious and collapsed in fits of vomiting in the heat of the sun. Meanwhile, Bill Reed, in traditional Indian attire at an altar in the lodge, urged them on. How else could they find the mystical power of Coyote's bigger and wiser brother, the creator of the Ute world?

The Sun Dance had become an important part of the Ute customs and way of life after Old Tabby led the Indians to the Uintah Valley. Adapted from other Indian groups, the "thirsty dance" went on for three to four days, without food or water, for the health, well-being, and solidarity of the collective group.[1] Now, two generations later, it was the third day of the Utes' annual Sun Dance. The parched meadow was near Whiterocks, close to the Uintah River, with the lodge positioned to the east so that it would receive the first rays of the sun in its entrance. Beyond it was an encampment of Indians centered on a lone tipi, known as the Morning Star Lodge. Outside the encampment were curiosity-seeking tourists. The non-Indians roamed freely outside the Lodge of the Great Mystery; but when one occasionally produced a camera, Elmer Hackford and others of the Ute warrior society warned them that photographs were forbidden.[2]

In the Indian encampment Preston Allen engaged in an earnest discussion with Elmer and Callie Hackford and a group of about thirty mixed-blood Uintah livestock operators.[3] They made up a majority of those ranging sheep and cattle who were struggling to resist Boyden and Curry's scheme to purchase their stock in the range corporations for the tribe.

Callie was angry about the thwarting of his plan to finance the purchase of the stock. Others pointed out that if Superintendent Zollar had allowed Callie to use outside financing, then surely he would have to allow Margaret Sprouse to

pay more than the appraised price, using her own family resources, and they would have ended up leasing range from her, or with no range at all.

Margaret Sprouse was only trying to protect her own sheep, said another. She was doing exactly what Boyden and Superintendent Fleming had recommended during the meetings of 1958–59.

The whole problem had started with Art Workman's plan, someone else charged.[4] If Art had not been greedy and tried to get the whole range for speculators, the tribe would never have decided to buy.

Preston observed that the mixed-blood Uintahs were always bickering, never agreeing on anything. How could they expect the AUCU board to act as their authorized representative if there were as many opinions as there were members?

Another charged that the corporations had done them in—when Elmer and Mac sent a telegram to the secretary of the interior asking that the regulations be published without the private treaty. When that was done, no mixed-blood Uintah could get enough range to continue to run livestock.

Elmer defended himself, explaining that he and Mac were not opposing the mixed-blood Uintahs but simply trying to get them fair value for their shares. The $2,000 or $3,000 Margaret Sprouse was offering was not nearly enough, he said.

Callie interrupted, charging that the mixed-bloods were so jealous of Margaret Sprouse, Art, or himself making a few bucks for themselves that they upset the deal for everyone. Besides, Callie asked, what made Margaret Sprouse a speculator just because she was using money jointly earned with her husband? Art's deal involved speculators, but he was only trying to get fair value for the land for everyone.

Margaret Sprouse was no more a speculator than the tribe, Preston agreed. Not only that, but her offer was the best one the board had at the time. If the superintendent had allowed it, they might not be as desperate to secure range as they would be if the tribe got control.

Why, many of them wondered, hadn't they gotten behind Callie? Then Margaret and Art would have had to pay a fair price, even if they were acting for speculators. Boyden and the tribe would have to pay a fair price, but now no one could get anything for their stock but the "appraised price" that the BIA authorized the tribe to pay, and the tribe was purchasing so many shares that it would soon be in control.

The planning groups were the source of the problem, another group said. If they had not approved the corporations, everything would be okay.

Preston Allen responded with as much anger as his mild nature allowed. The planning groups did not formulate the plans, he explained; they were dictated by John Boyden and the superintendent.

Finally Art Workman walked into the group. "I was in the position to buy up these stocks at one time, which I was going to do and pay more than they are paying," Art explained. "So, in the course of time it came back to us without the private treaty. Now we can't sell anything among ourselves. You have to take it all back and offer to the tribe. You can't even give it to anyone," Art observed, putting his finger right on the problem. "You would have to go back and offer to the tribe."[5]

Elmer confirmed what Preston and Art said, offering as proof that when his aunt Fontella (Fonnie) Hackford arranged to use his wife Wanda's grazing rights, Superintendent Zollar made Fonnie give the stock back to Wanda. "Any effort to dispose of the stock outside the regulations is without force and effect," Area Director Haverland instructed Superintendent Zollar. "No one can sell for valuable consideration something which he is unable to deliver. . . . [T]herefore, . . . if Mrs. Wanda Hackford did accept money from Fontella Hackford, purportedly to cover the transfer of stock, Mrs. Wanda Hackford should repay Fontella Hackford such money. To do otherwise would be accepting funds under false pretenses and would be as illegal as would be the purported transfer of range stock."[6]

On the same day, Haverland sent a letter to the other livestock operators telling them that their private treaties were void.[7]

After Art's plan to buy either the land or the stock with outside financing was rejected, Art had written to Secretary of Interior Stuart Udall: "[Is there] any way possible for me to exchange the two stocks of the corporations for a portion of the land, provided the tribe acquired all, or the controlling interest? I am more interested in being able to get some land in the transaction than the money which is being paid. . . . The 120 acres I have in mind is not the cream of the land and is not located in the center, but is located near the north boundary, so I am not asking for any special favors in trying to make an exchange."[8] Udall did not answer Art's letter, but on May 18, 1961, John O. Crow, formerly superintendent at Fort Duchesne but then acting commissioner, replied, "The land you desire has been fee patented to the corporation and is no longer under the jurisdiction of the Federal Government." A note handwritten by Adalyn H. Logan, realty officer at Fort Duchesne, in the margin of the file copy of Crow's letter indicated that Art then sold his stock to the tribe.[9]

The tribe is an "outsider," Callie observed, more than Margaret Sprouse or Art Workman might have been. The tribe was just an institution imposed on the Utes by the BIA. It was supposed to go out of existence after the full-bloods were terminated. Its members are Indians; but after the termination of the mixed-bloods, most of its members would not be Uintahs. To treat the tribe as a

"member" was wrong. The tribe was a corporation, created by the BIA under the Wheeler-Howard Act of 1934, and it was no more the same as its Indian members than First Security Bank was the same as its Indian trust beneficiaries, or more than any corporation was the same as its stockholders.

After the tribe began purchasing the shares, it quickly became the dominant shareholder and the mixed-blood Uintahs—and the full-bloods too—were forced to lease their range from the tribe. The tribe was as tough to deal with as any other landowner. In fact, the group agreed, the tribe was always controlled by non-Utes, usually even non-Indians. Boyden and the superintendent, whoever he was at the time, called the shots. Rex Curry, Ab Harris, and Francis McKinley frequently behaved as though they were Indians in name only. They worked for the tribe or for the BIA and did what they were told.

"Apples," Preston thought to himself. "Red on the outside, white on the inside."

"I got disgusted," Elmer's brother, Dick, recalled. "I didn't care whether they sold them or what they done with them, because I couldn't hold my kids' animal units in with them and give me a parcel of land that I could run a few cows on."[10]

Except to vent their feelings, their debate was of little consequence. It was clear that Boyden and Rex Curry were determined that the tribe would control all of the range. The private treaty promised to the mixed-blood Uintahs was an illusion. Still, the thirty-three who ran livestock must decide what they would do about the problem, and that was what had brought them together.[11]

The best hope seemed to be to approach the tribe as a group and try to negotiate something workable. The confusion generated by the Termination Act and the constant changing of the rules was evident.

Callie brought the discussion back to the essential problem. "I got a bunch of cows and no place to go with them. What we're confronted with isn't the value of the stock or anything else; it's to provide grazing for my livestock. So, if I'm forced to sell the stocks, the sole purpose is to gain access to the range to run my cows."[12]

Callie was right. They could keep their shares and be minority shareholders with insufficient range, or they could sell to the tribe, lease, and hope that the tribe would give them enough range. Either way, they were at the tribe's mercy. If they held out, there were sure to be pressures on them to sell, most likely by restricting access to the range.

Elmer Hackford observed that they really had no choice but to accept Boyden's proposal. If they sold the tribe their shares, Boyden said the tribe would negotiate a long-term lease on preferential terms so they could remain in

the livestock business.[13] Callie decided to talk to Rex Curry for the group. He was its natural spokesman.

Rex Curry's secondhand royal blue Buick LeSabre was parked among the encamped Indians. When Rex had returned to the reservation after four years at Brigham Young University and after joining the Mormon church, he no longer participated in the Sun Dance. He had no lodge of his own at the encampment. After Rex got his job as business manager for the tribe, he was able to afford luxuries like the secondhand Buick. He also seemed increasingly estranged from the ordinary Indians in the Uintah Valley.

Rex was there because Liz's son, Reggie, was dancing. "Reggie" and "Rex" were both nicknames for Reginald, their proper names. It would be unseemly, and possibly an affront to Liz, if the brother for whom she had named her firstborn son failed to attend.

Jealousy over Rex's relative prosperity did not account for the mixed-bloods' feelings toward him. Material things were not that important to them. The problem was that Rex, along with Ab Harris and Francis McKinley, was economically dependent on the tribe, the BIA, and, in an ultimate sense, on Boyden and other non-Indians who seemed to speak for both institutions.[14] That was undoubtedly why they had done the bidding of the advocates for termination.

Though they had power over the lives of Indians, and were looked on by Euro-Americans as spokesmen for the Indians, and were ethnic Indians themselves, Rex and others like him often did not represent the Indian point of view. Euro-Americans never learned that lesson from history. Those who have control over the lives of Indians by virtue of the Euro-American system, such as the BIA, rather than by the custom of the bands, are not always authentic spokesmen for the Utes. Even the tribe, Curry's employer, had doubtful authority to speak for the Utes. It was a corporation, formed under U.S. laws, composed of three distinctly different bands of Indians, frequently in disagreement with one another. It was not the counterpart of the council of respected elders that gave old-time leaders, like Old Tabby and Ouray, or more recent ones, like Old Jim Atwine and Pawwinnee, their authority.[15]

Callie approached the blue sedan. Its vinyl upholstery looked like real leather, and the plastic on its instrument panel looked like teak. From all appearances it was as luxurious as the Cadillac Boyden drove.

Callie suggested to Rex that they trade their stock for an equivalent amount of range. "Hey," Callie said, "I'll just trade you my stock."

"There ain't no way," Curry replied, "because your stock doesn't represent land, it represents an animal unit, see, carrying capacity, so we can't trade you land."[16]

Preston knew that would be Rex's answer. He and Elmer had made that proposal over and over, and Boyden had said, "You can't transfer animal units to land." Superintendent Zollar echoed the lawyer's assertion that the corporations were formed under the plan and could not be disincorporated. According to both, the stock could never be exchanged for land.[17]

Callie and Rex then agreed that if the livestock operators would sell their shares to the tribe, the tribe would give them a ten-year lease, with an option to renew for another ten years, to run a minimum of one hundred head of cattle on the range on a preferential basis.[18] As a further inducement, Curry volunteered that the tribal range was not fully stocked and the mixed-blood Uintahs could use the excess range: "Now, at the present time some of you can run as high as 175, but as the tribe increases their carrying capacity you will have to diminish to a hundred head. But a hundred head will be the basis which you'll run on until the agreement expires."[19]

The agreement was further refined at a meeting at Curry's office in Fort Duchesne.

By October 1960, Margaret Sprouse had engaged a lawyer, Milton A. Oman of Salt Lake City. Oman drew the entirely sensible conclusion that the tribe was not a "member of the tribe." He therefore filed a lawsuit seeking to require Superintendent Zollar to proceed with sales of the range corporations according to the promised private treaty and to prevent the Ute Indian Tribe from purchasing the range corporations or their property.[20]

On October 10, 1960, the Tribal Business Committee approved the agreement between Callie and Curry by formal resolution granting an "option to graze on the [tribe's] lands" in exchange for "the stock listed for sale," for the customary fees, and that "this privilege will extend for not more than twenty (20) years." The resolution continued, "The Ute Indian Tribe is cognizant of the desire of certain members to remain in the livestock business but who are fearful that they may encounter difficulties in maintaining their equity in the aforesaid Corporations. . . . [B]oth the Tribe and the Government are desirous of seeing these former members maintain their livestock enterprises which is their only means of livelihood."[21]

The resolution also provided that its "conditions will be . . . approved by the Area Director." Callie Hackford then sold his stock to the tribe, thinking he had an agreement that would permit him to remain in business. The livestock operators were generally dissatisfied, but some of them also accepted. "Well, you took about what you got," Callie explained.[22]

By December 1960 the tribe had adopted a resolution authorizing the purchase of range corporation shares at $550 per share.[23]

Meanwhile, back at the Sun Dance, the three bands of Utes surrounded the Morning Star tipi in a great semicircle. The encampment seemed like the stars in the heavens—like that galaxy Euro-Americans called the corona borealis. To the west of the Morning Star was the Lodge of the Great Mystery—symbolic of the Earth with its broad opening on the east.

The galaxy of Indian camps was composed of friends and tribesmen of Preston and Elmer, both mixed-blood and full-blood. It was the time when the ranks of respected elders were reaffirmed, when warriors took their vows, and when the Great Medicine of the Sun was invoked—all according to the traditions of the Utes. Many of those who participated were now Christians. They nevertheless felt the importance of renewing their communion with their Indian origins. The Sun Dance was therefore of paramount significance to the twentieth-century Utes.

The solemnity created by the rhythm of the ritual in progress was interrupted by the approach of Francis McKinley, who declared that Preston, Elmer, and the other mixed-blood Uintahs were no longer Indians. They were the same as the Euro-American spectators, and should leave the encampment of Indians.

The Sun Dance chief had taken Reggie to the tipi of the Morning Star, had chanted his praises, and had appointed Bill Reed to preside at the altar. Reggie and Bill were both mixed-blood Uintahs, and Preston and Elmer were designated members of the Ute warrior society who gathered timber to construct the lodge and altar. What gave Francis the authority to decide who was an Indian? Did a government paycheck give him greater authority than the traditional elders of the Utes?

Leaving the angry mixed-bloods, Francis walked away, planting aviator-style sunglasses, like those state troopers wear, on his nose, and got into his Chevy, taking care not to soil the polyester suit, so new it still held its creases from the display rack. The polished and educated man with Indian blood in his veins who advocated destruction of the Indians' communal way of life drove away. It seemed that he had forgotten his heritage when his palms began itching over the huge Colorado settlement, but Ute posterity might remember him, too, for avarice and treachery.[24]

The Sun Dance was coming to an end at the Lodge of the Great Mystery. The young warriors who had participated and the elders who had presided filed out of the lodge to the traditional song of the drum. Many of them wore sunglasses, just like Francis McKinley. Their breechclouts were of broadcloth purchased at the dry goods store, rather than of skins or fabric woven on an Indian loom. The camps of the Indians were made up of camper trucks, trailers, and vans. The occupants wore print shirts and Stetson hats.

Sun Dance Lodge and spectators. Courtesy Smithsonian Institution, National Anthropological Archives.

The Utes were, after all, living in the twentieth century. Adapting to the clothing and conveniences of a new civilization, even if it had been forced on them, was natural even in this traditional Ute ceremony. There was no need to don a headdress or wear a blanket to put on a show for spectators. This was an Indian ceremony, performed by and for Indians.

Non-Indian institutions were supplanting those of the Ute, however, and that was troubling. The affairs of the Ute, traditionally affirmed in ceremonies such as the Sun Dance, were now controlled by Rex Curry, Francis McKinley, Ab Harris, and others installed by the BIA. It was they who were less Indian because they did the bidding of John Boyden, Arthur Watkins, and other non-Indians.

The Lodge of the Great Mystery and every Sun Dance lodge would never be entered again by the Utes. It would be considered sacred, and allowed to go back to nature. It, like the mixed-blood Uintahs who participated in the ritual, would be abandoned to whatever fate held in store for them in mainstream American society.

# 9

# THE GAME STEWARD'S APPRENTICE (1961-64)

*Other letters that I have written to other people in Washington have come back to this agency and nothing was done but to have the writer blacklisted, called an agitator and trouble maker and still the same thing goes on. When will it ever stop? There is a sad story in connection with all of this, and maybe some day you will have all of the facts.*

*Bill Reed, April 21, 1955*

As the heat of summer overcame the Uintah Basin in 1961, two new figures appeared in the saga of the mixed-blood Uintahs. Charles Tabb George had graduated from the University of Utah College of Law in 1960 at the age of forty. His delayed entry into the legal profession was in part the result of the considerable time he had spent as a chronic psychiatric patient. He was a stranger to the Utes. John B. Gale, justice of the peace in Roosevelt and the Mormon "missionary" to the Indians, was more familiar to the Utes. Gale had dealt with petty legal problems of the Indians for years, and with less than sympathetic understanding. In return, the Utes had nicknamed him, somewhat less than respectfully, "b'Gale." Both were new employees of First Security Bank: George, a new trust officer at its main office in Salt Lake City; b'Gale, assistant manager in the new Roosevelt branch.

By the date of George and b'Gale's employment, the tribe's authorization to purchase shares in the two range corporations had been modified to permit purchases if, but only if, the tribe "is the successful bidder for all the stock controlled by the First Security Bank, as trustee."[1] There was a sound reason for that modification. If substantially all of the 175 shares that would shortly be controlled by the trustee were acquired by the tribe, if the private treaty sales

had been voided, and if Art Workman, Callie Hackford, and Margaret Sprouse's plans to pay more than the appraised value were crushed, then the tribe could surely purchase at the arbitrary appraised price the remaining shares necessary to satisfy the commissioner's requirement that it acquire control.[2] First Security Bank, when it became trustee, would thus be pivotal in Rex Curry and John Boyden's plan to acquire the range of the mixed-bloods for the tribe. The block of shares controlled by the bank had become the key.

George and b'Gale played a tragic role in the undoing of the mixed-blood Uintahs. They had profound influence on all mixed-bloods for the balance of their lives and perhaps on their progeny for all time.

On July 28, 1960, the secretary of the interior had executed the agreement making First Security Bank trustee for all mixed-bloods who were "minors, non compos mentis, or, in the opinion of the Secretary, in need of assistance in managing their affairs."[3] It was the agreement Boyden had been working on for so many months and had referred to when he solicited the AUCU board to rehire him in January of that year. The agreement culminated George Eccles's efforts, beginning with his letters to Commissioner Emmons in 1955 and 1956,[4] and the efforts of high-ranking bank officers, including Ralph Cowan, dating from 1958.[5]

The as yet unissued stock formally subject to the trust was 35 percent of the total. Indirectly, the bank would control the stock of all 490 mixed-bloods, for it had the certificates of all 490 shareholders in its possession until August 27, 1961, and was the transfer agent thereafter for the three corporations.[6] Cowan had promised to act for the individual shareholders as their transfer agent[7] and, moreover, was obligated by the trust agreement to "give careful and sympathetic consideration" to the needs and aspirations of adult members of the children's families who were not formally subject to the trust and to "protect them against the improvident dissipation of their assets" and "use [the] trust assets to acquire real property for farm or business."[8] The bank was thus obligated to protect all of the mixed-bloods.

George was immediately assigned to administer the trust. Under Cowan's supervision he was to carry out the bank's promises.

George had a personal bearing that engendered confidence. He was tall, handsome, with a full head of dark hair and the slightly jowly appearance of one at the middle years of life. He gave the appearance, falsely, of having the wisdom of a banking career behind him. Nothing hinted that he was a rank beginner as a lawyer and trust officer.

George worked part-time for First Security Bank in 1960, learning the functions of the trust department.[9] Now he was to handle the big Affiliated Ute

account, which Cowan and Eccles had worked so long to procure. He might have been in awe of the responsibilities he was undertaking were he not working directly under Cowan, to the extent of using Cowan's exact words in every letter he would write and every act he would perform.[10] Working so closely with such an important man, recognized as an expert in the trust field, was a great opportunity for a new trust officer, particularly one with George's limitations.

George had been in and out of mental wards for some fourteen years, but he gave no clue that he had mental or emotional inadequacies that made him a poor counselor, particularly for those of limited ability or with respect to property and tribal rights of such magnitude. At the time of his employment to handle the Affiliated Ute account, he was undergoing electric shock treatments. Diagnosed as schizophrenic with depressive reactions, George was described by his doctors as having "feelings of helplessness and undecisiveness" and "a tendency to cling to others."[11]

Choosing George to manage the affairs of the mixed-blood Uintahs showed poor judgment by Ralph Cowan. There was little likelihood that George could help those "in need of assistance in managing their affairs"—little hope he could protect the individual Indians, as Cowan had promised, and little promise that he could assure that any sales of shares in the three corporations were conducted properly.

As George embarked on managing the affairs of the mixed-blood Uintahs, he sat among rows of desks on the second floor of the office building occupied by the trust department of First Security Bank on Main Street in Salt Lake City. From that vantage point, he observed John S. Boyden holding frequent meetings with Cowan in a private room throughout 1960.[12]

The subject of those private meetings is revealed in a memorandum in the BIA files dated August 16, 1960. It discloses that the area director, Frederick M. Haverland, and the tribal attorney, John S. Boyden, had discussed "several problems relating to the transfer of range corporation stock certificates" and that Boyden had held meetings with "representatives of First Security Bank."[13] Haverland identified the "problems" in a letter to Boyden on the same date as the probability that the "mixed-bloods will object to the inclusion of the Ute Tribe under the definition of 'member of the tribe.'"[14]

Those "problems" must, of necessity, be discussed with the transfer agent, First Security Bank. Cowan must be informed that Boyden had persuaded Deputy Commissioner Rex Lee that "member of the tribe" should be interpreted so that it meant "the Ute Indian Tribe" and not its "members," for Cowan must act on the new interpretation. Under the contract Cowan had

entered into with the three corporations, if a proper offer was not made to the "members of the tribe," then the bank was obligated to refuse to transfer. If Cowan was not fully briefed on the changed meaning of "member of the tribe," he might err. He might conclude that individual Indians, like Preston Allen, Elmer Hackford, Art Workman, Callie Hackford, or Margaret Sprouse, were "members."

Boyden undertook to assure that the suit Margaret Sprouse had filed against Superintendent Zollar in October 1960 through her lawyer, Milton Oman, to enforce her own rights as a "member of the tribe" would fail. Boyden and Lee met and discussed strategy. They amended Boyden's contract with the tribe to permit him to engage in litigation against Sprouse. They also arranged for a meeting in Washington on December 7, 1960, attended by Boyden, Curry, Russell Cuch, chairman of the Tribal Business Committee, Assistant Secretary of Interior George W. Abbott, and Acting Commissioner Lee (to which representatives of the mixed-blood Uintahs were pointedly not invited). At the meeting a letter was composed by Boyden for Abbott's signature and transmitted to him on January 12, 1961, directing Superintendent Zollar to disallow the purchase of shares by Sprouse and approve sale to the tribe.[15] Boyden then collected statements and transmitted them to the BIA for use against Mrs. Sprouse.[16]

Curry and Boyden were thus sure, before the lawsuits the area director had predicted could begin and before anyone could challenge the revision of the English language authored by Boyden and Deputy Commissioner Lee, that their efforts would be doomed to failure. The BIA, which remained the legal guardian for the mixed-bloods until August 27, 1961, and trustee of their property until August 27, 1964, thus conspired with Boyden against one group of his clients and one of its wards for the benefit of the other group of clients and wards.

In two of the private meetings between Boyden and Cowan, Boyden explained that the tribe was interested in buying the two range corporations. He explained that if the bank would sell the shares out of trust, *in a block*, it would help the tribe gain control.[17] That fact needed no explanation, for it was obvious to one with Cowan's experience in corporate affairs that the 175 shares held in trust represented such voting clout that the owner of any substantial number could control the affairs of the two range corporations and the range itself. Individual owners, particularly those as poorly organized and inexperienced as the mixed-blood Uintahs, would be at the mercy of the owner of such a block.

Did Boyden tell Cowan that he had persuaded the secretary of the interior to change the meaning of "member of the tribe" and that Haverland and George

Hedden had both objected to the change? Did he tell him that the change would eliminate any chance that individual Indians, including those for whom the bank was trustee, could make any use of the range? Did Boyden tell Cowan of the friction that had developed between the tribe and the mixed-bloods, for whom Cowan was trustee and business agent, or of the tribe's threats to sue the mixed-bloods? Did Boyden tell Cowan of the difficulty presented under his contract with the mixed-bloods if his principal client, the tribe, took an adversarial stance? Was Cowan concerned about those matters, having contracted with the corporations to act for the individual mixed-bloods in seeing that the transfers were properly made?

By the time of the private meetings between Boyden and Cowan, both the tribal attorney and the BIA had made it clear, by their deeds and in their confidential communications, that they would aggressively assert that the tribe had rights as a "member of the tribe." However one might view that matter, the mixed-bloods were entitled to have someone assert, with equal aggressiveness, that fanciful interpretations must not be indulged in at the expense of their own rights as "members." Ralph Cowan had contracted to do exactly that; and at that point in the termination process, there was literally no one else who could.

No word of protest, however faint, was ever raised at Boyden's scheme, at least not after Haverland's and Hedden's protests were squelched. Perhaps Cowan did not understand that in the context of the Meriam Report, he was obligated to use "sound principles" of management of Indian property; that as guardian, he must "conserve the capital of the ward and not permit him to dissipate his capital for living expenses."[18] Or perhaps Cowan agreed to aid Boyden, whatever the risk of injury to the trust beneficiaries. The former would assume a degree of incompetence that is simply not credible; the latter, a shocking abuse of trust.

The stock in the two range corporations was not delivered to the bank as trustee until October 20, 1960;[19] but five weeks earlier, on September 13, 1960, Boyden appeared at a meeting of the bank's trust committee to propose that it sell to the tribe the shares in each of the two range corporations. At least Ralph Cowan knew Boyden's purpose.

The meeting of the trust committee was as somber as a conclave of undertakers. The rich paneling of the boardroom was more appropriate for bankers, however. The distinguished, gray-haired man at the head of the table, as serious as a funeral director, was Harold G. Steele, George Eccles's brother-in-law and chairman of the trust committee. But Ralph Cowan, secretary, presided.

"This meeting has been called at the request of Mr. John S. Boyden," Cowan announced. "He wants to present to the trust committee a proposal of

the Ute Tribe to purchase, as a block, the shares of the Antelope Sheep Range Company and the Rock Creek Cattle Range Company held in the Affiliated Ute Indian Trust."[20] Cowan was incorrect that the shares were held by the trust; in fact, the stock certificates were not issued yet.

The members of the trust committee evidently gave no thought to the fact that a block sale would exclude anyone but a well-financed purchaser, like the tribe, and that the dynamics of the marketplace would cause the price to decrease, to the disadvantage of the shareholders and the trust, if there was only one purchaser. At least no one raised a question about it.

Boyden announced, "The Ute Indian Tribe is interested in buying these two corporations because some of these mixed-bloods are buying the shares, saying, 'I am a member of the tribe, and, therefore, I am entitled to buy it and do as I please with it.' One of them has said that right in his letter to me."[21]

The members of the trust committee apparently gave no thought to the fact that the price of the stock would increase, to the advantage of the trust, if there was competition for the purchase of shares. According to the minutes, they remained silent.

"Each minor's share entitles it to graze two and a half cows for six months, and a sheep share entitles you to graze five sheep for one year. Well, of course, those are not economically sound, and unless the minor is in the cattle or sheep business that isn't too practical for them. The only thing that brought all of these minors together is the fact that they are all minors. There is no reason to believe that they can club together and make economic use of the range."[22]

The minutes record no questions. The trust committee listened as Boyden asserted that the tribe "had an appraisal made, and each 'unit' of one share in each corporation has an appraised value of $1,000.00." To convince the trust committee that his proposal was generous, Boyden added, "The tribe is willing to pay $100.00 more than the appraisal."[23] No appraisal report was presented.

Boyden then sounded an ominous warning. "Others are seeking to buy this stock for apparently speculative purposes. There are dangers that if they do so the trust will become a minority stockholder, and I know from personal experience, having been a minority stockholder myself in a range company, that a minority stockholder in a range company has many problems."[24]

Boyden continued to explain his plan to prevent the others from buying the stock. "If the stock held by the trust were offered as a block, it is believed that enough additional shares can be purchased so that the tribe will hold a majority of the 490 shares outstanding for each company."[25]

The trust committee still said nothing. If they were not under Boyden's spell, or perhaps instructed in advance what their decision was to be, there are

obvious questions that should have been raised. For example, what would be the assets of the two corporations? But no one asked. It was not disclosed that the corporations would own 172,000 acres. Had that question been asked, someone might have observed that 172,000 acres divided by 490 Indians represented 351 acres each. Was an interest in 351 acres worth more than $1,100? Was that much land, in 1960, not worth more than $3 an acre? No one asked.

Someone might have asked who the "others" seeking to gain control of the corporations were and what motivated them. But no one did, so Boyden did not disclose that they were Preston Allen, Art Workman, the Hackford family, Margaret Sprouse, and other livestock operators in the Uintah band who wanted the stock for their own livelihoods and for their children, who were beneficiaries of the trust.

Had that question been asked, it might have occurred to someone that the bank had contracted to consider the interests of the parents of trust beneficiaries in its discharge of the trust. No one asked.

Someone might have observed that the trust beneficiaries and their families were all Indians. Should a trustee, therefore, take special considerations into account when dealing with them? Had there been such a question, they might have learned, if they did not already know, that the Meriam Report had cataloged a host of special considerations for trustees dealing with Indians and their property. One was that selling their property was to be avoided because it would leave them landless paupers.

Someone might have asked to see the appraisal. Had they done so, they would have learned that the appraisal was not prepared for the bank or even for the tribe and was outdated. Had they pressed that question further, they would have learned that the appraisal was of the value of the grazing rights represented by the shares, not the value of the land. Had they inquired of the officers of the AUCU for whom it was prepared, they might have learned that these elected representatives believed the appraisal had been prepared simply for tax purposes.[26]

No one asked what price the "others" were willing to pay for the stock. Had they done so, they would have learned that Art, Callie, and Margaret were willing to pay *more* than the appraised value. It would then have been appropriate to negotiate the price.

Could the land that would be owned by the corporations be used for anything other than grazing? No one asked.

The trust committee, in a word, asked nothing.

From the trust committee minutes, it appears that the bank officers simply accepted what Boyden told them as if he were some sort of oracle.

Two days later the trust committee met again. This time George, Cowan's apprentice, was asked to "make a trip to Roosevelt in the coming week to make a survey as to the wishes of the older minors and of the parents or guardians of the younger ones."[27] And so it devolved on Charles Tabb George, in the space of a week, to assemble the *only* information the trust committee would consider in determining the sale of equitable interest in a tract of land larger than many entire counties in the United States.

The very existence of the trust stood as mute evidence that the older minors and the parents of the younger ones were considered unqualified to make such a determination. George should have known—as did anyone familiar with the mixed-bloods—that termination had imposed such economic stress that they were desperate "to convert any and all assets into cash."[28] So why did the trust committee instruct him to ask? Did, perhaps, someone plan to play on the known economic distress of the mixed-bloods?

Even so, it might be appropriate to feel compassion for George in the task assigned him. As he sat in the rows of desks contemplating the task thrust on him, he must have wondered what he would tell any parents who inquired about the terms of the sale.[29] Suppose someone asked what property the corporations owned? How could he explain the economic prospects of the corporations, when their stock was as yet unissued and they were not even in operation? How could he answer any of the questions the trust committee might have asked, but did not? How could he possibly become familiar with 172,000 acres of remote rangeland in a week?

Ralph Cowan gave him no information about the sale and no instructions except to get the signatures of the mixed-bloods on a form consenting to the sale. He was to tell them, "The trust department thinks it would be a good idea to sell your stock unless you have some interest in raising livestock."[30]

Even that task was impossible. How could George contact 175 broadly dispersed minors and their parents in one week? But George had been instructed to get the signatures on the forms, and get the signatures he did. He simply took them to the tribal offices and asked the BIA employees, who were agents of the purchaser, to get the signatures for him.[31]

"He asked me if I wanted to sell . . . and I told him no," Ezilda (Dot) Hendricks explained, "and he said 'you better go ahead and sign because if you don't I can sign for you.' I just went ahead and signed after he told me he would sign for me."[32] The *appearance* of consent was sufficient.

The trust committee reconvened seven days later. George reported that twenty-three of the beneficiaries or their parents had requested that the stock not be sold and that the bank had no authority to sell the stock of four others.

George also reported that fifty beneficiaries or their parents had indicated that they wished the stock sold, and nine were held for incompetents in "whose best interests it appeared their stock should be sold."[33] The trust committee then resolved to sell every share for which it had authority and which it was not specifically instructed not to sell. The shares sold amounted to the entire interest in the range of 147 of the 175 trust beneficiaries.

The minutes do not explain what "best interests" of incompetents or others indicated that the stock should be sold. They merely state that "very few lived in the Roosevelt area and many lived outside the State of Utah." In point of fact, in 1956, 61 percent of all mixed-bloods lived in the Uintah Valley. By 1960 approximately 50 percent still lived in the Uintah Valley, despite pressure from the relocation program to force them out. Furthermore, a substantial percentage of those living away from the Uintah Valley had left temporarily for training or education.

The minutes also state that "it was evident there was little chance that any of these could ever make personal use of the grazing rights to which stockholders were entitled." The University of Utah Extension Division, which had helped assemble the files on each Indian for the superintendent, concluded otherwise, however; their records show that of 210 adult mixed-bloods, 109 were engaged in farming or ranching, that 54 percent of them lived in the Uintah Valley, and that 74 percent lived in Utah.[34] These conclusions were based on a thorough five-year study.

If the trust committee did not know that what it recited in its minutes was incorrect, it was because it simply did not ask. Nor did it look at the University of Utah report in the agency files and available for examination. Perhaps it did not care.

After George's report, the trust committee apparently realized there would be objections to the sale. It was resolved to make the sale subject to an option for the bank to repurchase not more than fifteen units (i.e., one share in each corporation) within a period of five years. The option was to "protect any who might wish [to purchase] their stock."[35]

First Security Bank, which by that date had spent five years soliciting the trust business of the mixed-blood Uintahs, had dispatched Ralph Cowan and five other high-ranking trust officers to the Uintah Valley to assure the Utes that "nothing is as cheap for the services rendered as a trust organization,"[36] and had brought Preston Allen to Salt Lake City to impress him with its technical skills, had sold the minor mixed-bloods' interest in the range with unbecoming haste. No reason was given why the transaction must be completed in nine days, why the trust committee could not wait until it had received the stock, and why a

thorough investigation of the potential and importance of this decision to the Ute way of life was not necessary. The trust committee simply accepted the unverified representations of the lawyer for the purchaser in a transaction involving potentially millions of dollars and 172,000 acres.

Cowan and George had in truth only echoed in their behavior the philosophy of the Honorable Felix Brunot: "It is not for me or any friend of mine that I am talking to you. . . . It is because I know that it is good for the Utes." Had the AUCU board known—and they did not—they might have wondered what became of the expert abilities they had been promised. It had every appearance of a "done deal."

The sale of the minors' shares by the trust committee was completed on March 13, 1961.[37] It was the prelude to a period of panic selling of range shares by mixed-blood Uintah adults during the rest of 1961 and 1962. Mixed-blood Uintahs, particularly those not in the livestock business and without an immediate need to retain their shares, stampeded to sell. After Art Workman's, Callie Hackford's, and Margaret Sprouse's offers had been blocked and after revocation of the private treaty, the only purchaser was the tribe and the only price, that fixed in the appraisal. The mixed-blood Uintahs, conditioned for generations to rely on the BIA's guidance as trustee and guardian, were now even more vulnerable to Cowan's urging to sell. Those who had once decided to sell to relatives or friends under the aborted private treaty quickly accepted the tribe as the substitute purchaser.

Many livestock operators were swept up in the selling frenzy, as they found themselves frustrated at every turn. They were minority shareholders, confronted with a dominant shareholder's demands. Their individual grazing entitlement was too small to use economically, and there was no prospect of obtaining the additional range needed.

Callie Hackford was moving his cattle to the Rock Creek range for the summer of 1961, where they would graze according to the agreement negotiated with Rex Curry. Suddenly a ranger employed by the BIA blocked the road. He told Callie he could not go on the range without a lease.[38]

"I don't have to pay for a lease," Callie explained. "We're supposed to have an agreement."

"What you're supposed to have and what you have are two different things," the ranger replied. It was the first indication of the final undoing of the mixed-blood Uintahs.

Callie, sure the ranger did not understand, went to Curry and asked what happened to the twenty-year agreement. "Mine expired rather quick," he said

sardonically. Rex said they were not reneging on the deal but that Acting Commissioner Leon V. Langan had refused to approve the agreement and instructed the area director to reject it.[39]

"Well, that was only a verbal agreement," Boyden later explained. "You know a verbal agreement is not legal." The mixed-blood Uintah livestock men were out of luck again.[40]

The tribe then offered Callie one of its poorest range units but required him to bid for it against members of the public, including non-Indians.

"I'm not trailing 60 or 70 miles, fighting cars and everything else, and no place to stay overnight, to lease from you," Callie told Rex. "There's too much work involved, and it's hard on the livestock, trailing them over roads with small calves in the spring, and I just won't do it." Callie was forced to purchase grazing land for his cattle and incur the additional expense of fencing it, which was impractical from an economic standpoint.[41]

On August 27, 1961, by proclamation of the secretary of the interior, the mixed-blood Uintahs were terminated. They were no longer entitled to services to Indians, and the United States was no longer their guardian.[42] Any trust obligations specified by the Termination Act as to the individuals, rather than the land still held by the United States until August 27, 1964, or subject to approval as to sale until that date by the United States, were thereafter discharged by First Security Bank.

By the fall of 1961, the final outcome of termination had become clear. The mixed-bloods' share of the common land and other resources of the tribe had been distributed to them in the form of stock in the three corporations, but the stock had been stripped of the protections intended for the mixed-bloods. The private treaty had been eliminated. The superintendent had failed to assure that sales were to the mixed-blood members. Relentless practices, interpretations, and revision of interpretations had turned every protection into a device to force sale to the tribe rather than to its members. The grim results were inevitable. All but a small handful of mixed-blood Uintahs had been separated from their property. Many were forced to relocate in the cities to find jobs.

By the end of 1962, a small minority of mixed-blood Uintahs still resisted the pressures to sell: Preston Allen, Mac Murdock, and about a dozen other livestock operators held on, hoping against hope.[43] A very few, like Margaret Sprouse, had sufficient means to resist.

By the summer of 1963, Liz Bumgarner found herself in dire straits. She and Sam had divorced, and four of her children were in school. The money from her range shares had been spent. Sam-N-Liz's Store had been sold. She was under intense financial pressure, and the Ute Distribution Corporation

stock was the only remaining asset that could be converted to cash. So Liz went to a used car dealer in Roosevelt who agreed to buy her stock. It was the first time any terminated Ute had tried to sell Ute Distribution Corporation stock. Indeed, it was the first time any Indian had tried to sell stock in any of the three corporations to a non-Indian.

How the sale would be accomplished was a problem. Ralph Cowan held the stock certificates in Salt Lake City according to the transfer agent agreement. The corporation bylaws required that any transfer be by endorsement of the certificate itself. There was also the requirement that the stock must first be offered to "members of the tribe," which had been interpreted to mean the tribe itself; and the superintendent was required to furnish "to the purchaser" a certificate that the requirement had been satisfied. The three requirements, in combination, meant each Indian selling to someone other than the tribe must first go to Cowan to get the stock certificate; then the non-Indian purchaser, rather than the Indian, must go to the superintendent to get his approval.[44]

The requirements were intentionally cumbersome, designed to protect the Indians from improvident sales. It was intended that the mixed-bloods would have time to think about what they were doing. Cowan had been instructed "to discourage the sale of stock of the Ute Distribution Corporation by any of its stockholders and to emphasize and stress to said stockholders the importance of retaining said stock."[45] He was to assure that they saw a red-letter warning to that effect printed on each stock certificate. He was also to tell them that the stock represented enormous mineral values and should never be sold. The requirement that the purchaser must go to the superintendent was established to ensure that the superintendent could verify that the proper amount had been paid to the Indian in cash. Liz Bumgarner helped set up those careful restrictions as a director of the AUCU, but now her desire to sell, forced on her by circumstances, was in conflict with them.

Ralph Cowan and b'Gale, Cowan's other new apprentice at the Roosevelt branch, would shortly nullify those protections. Cowan simply turned the protections devised for the mixed-bloods upside down and applied them to protect himself. In Cowan's view, the main goal of the transfer procedure was to shield himself from criticism. He saw no reason why the requirements should be applied in such a way as to protect the Indians.[46]

When Cowan found it inconvenient for the Indians to come to him to endorse their certificates, he delivered batches of stock powers to the Roosevelt branch for blank signature by mixed-blood sellers which he accepted in lieu of endorsing the certificate. He also decided it would be sufficient if the Indian seller certified that the purchaser had paid the required amount in cash.[47] The

first deviation meant that no Indian would be warned not to sell his stock. No one would explain the value of the minerals to them. The second deviation meant that no one—not Cowan and not the superintendent—would know for sure that the Indian really got his or her money. The Indians would become vulnerable to the very dangers the procedure was to protect them from.

Judge b'Gale contemplated the changes directed by his superior. At his station in the Roosevelt branch, b'Gale's stocky torso, round features, round spectacles, and striped suit gave him the appearance of an enormous beetle. As Indians came to his desk, he took his cue, perhaps, from Cowan's own handling of the transactions in the range corporation stock. He had learned to clothe transactions with Indians with an appearance of regularity; promises the bank had made to protect the Indians were secondary at best.

In any event b'Gale lost little time capitalizing on the opportunity Cowan afforded him. Within a few months he had employed the blank forms Cowan supplied to develop a brisk brokerage business in Ute Distribution Corporation stock. He urged Indians to sell when they came into the bank for any reason. He maintained accounts for non-Indian purchasers from all over the United States. Mixed-blood Uintahs, already separated from their range shares, were now flocking to the bank to sell their Ute Distribution Corporation shares, which they knew little about anyway, and collect whatever modest sums were offered to alleviate the economic stress the termination program had placed them under.

On March 10, 1964, Melvin Reed was paroled from the Utah State Penitentiary on his twenty-year conviction for writing a $20 check without sufficient funds. While Melvin was in the penitentiary he received a letter asking if he wanted to sell his Ute Distribution Corporation shares and enclosing a form to be completed to advertise them for sale to members of the tribe. Melvin completed the form and returned it, indicating that he would sell his ten shares for $6,500.

On his release, Melvin went directly to the home of his sister, Rita Jean Reed Tabby. His next stop was the Riverside Tavern. During the course of the evening Melvin encountered Nick Murray, a used car dealer he considered "a pretty good egg" and with whom he had "been on quite a few drinking parties." Murray loaned Melvin $30. It was just enough to get Melvin drunk. Melvin was arrested and jailed in Roosevelt. Murray "was boozing it up that night just as bad as I was," Melvin explained, but Murray was not arrested.[48]

The next morning Melvin was arraigned before Judge b'Gale. Nick Murray was b'Gale's partner in purchasing Ute Distribution Corporation shares, but Melvin did not know that.[49] In his capacity as justice of the peace, b'Gale had

earlier "sentenced [Melvin to] quite a few jolts in that jail," so Melvin did not "have too much respect for Gale."[50]

Seated behind the table in his home where court was held, b'Gale peered at Melvin through the thick lenses of his round spectacles. Before he got to the matter of the drunk charge, Melvin recalled, Gale "asked me about—if I was going to sell my stock. I told him that I didn't know at the moment, and so he went ahead and fined me $200. So I told him that later on that day or the week or something I'd pay him that $200. So he let me go."

Melvin slept it off for a few hours at Rita Jean's house. Then Melvin's drinking friend reappeared. "Nick Murray come down," according to Melvin's account, "and he had this '59 Cadillac. And he come down there, and he said, 'I heard you was looking for a Cadillac' . . . and told me to come on and go for a ride. Actually, I didn't want to, because I still had a hangover, but I did go with him. And he had a bottle of whiskey there. So we took a ride.

"I didn't want that Cadillac—not at first. It took a little persuading—well, what it actually amounted to, we got to drinking. And of course, after this bottle was about gone, well, naturally I agreed to go along with him. He was a pretty good guy, and all that old baloney."[51]

Nick took Melvin back to b'Gale's office. "We got down there," recalled Melvin, "and when he wrote up the contract, well, I was giving him $3,800, something like that, for the Cadillac, and it come out I still owed him four hundred and some odd dollars. And when I advertised them shares, I advertised them for $6,500. And I'm getting a $3,800 cadillac and still owing him four hundred and some dollars on the deal. Of course, I didn't pay no attention to all that until after I sobered up."[52]

Melvin signed two mimeographed pieces of paper. B'Gale notarized his signature on both instruments. One of the papers was the blank stock power that Cowan furnished; the other was an affidavit with operative facts, such as amounts and names, left blank. They were later completed to show, falsely, that one of Gale's out-of-state clients had purchased the shares and that Melvin had received $6,500 in cash.[53]

"Only thing that was on [the blank affidavit] was my name," recalled Melvin, "and they said they'd take care of it. I figured they already got the deal figured up, and they know what's going on." Melvin protested that he couldn't sell his ten shares for less than the $6,500 he advertised them for. "He [b'Gale] said that they had a way to take care of that, so I didn't think no more of it. Well . . . he's telling me all the time, 'we'll take care of it' and everything. I figured: $3,300, that's going to take care of five shares [and] I've still got five shares left. . . . It got me all confused there and everything."[54]

Melvin went on a joy ride in the red cadillac. A girlfriend was driving when the car crashed, with Melvin, still drunk, "in the car somewhere."[55]

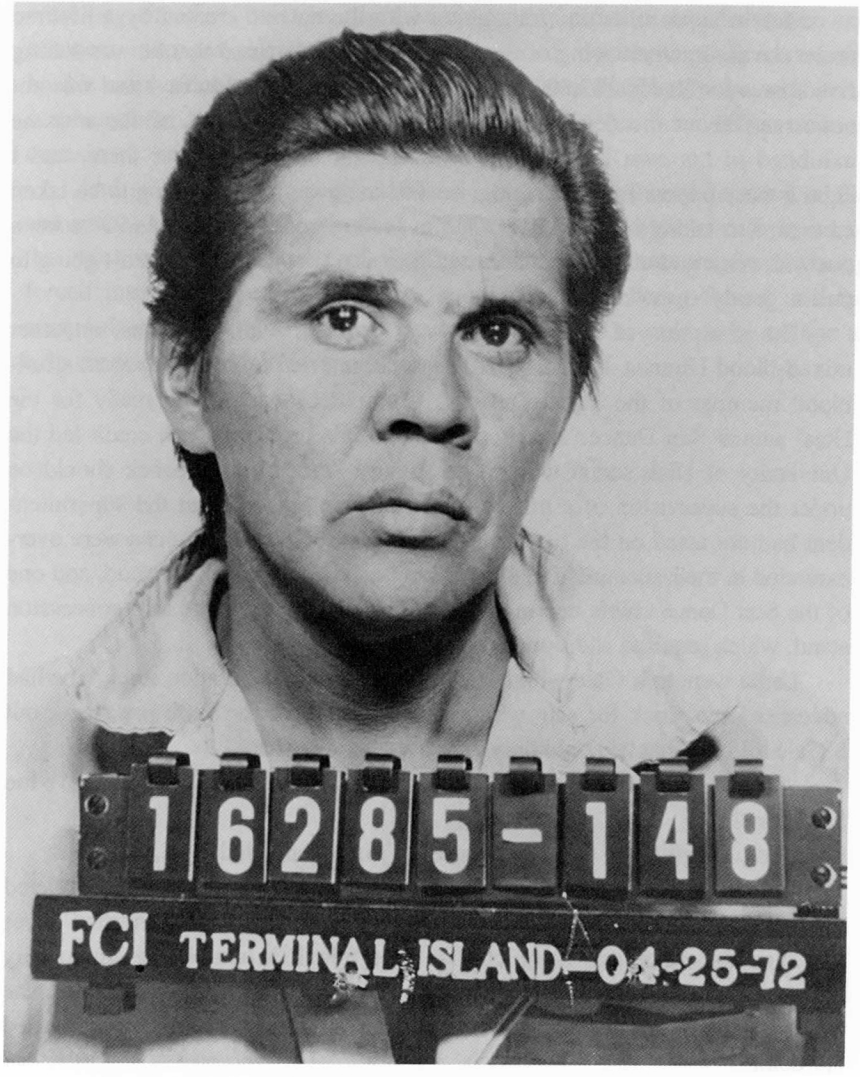
The "affidavit" was then transmitted to Superintendent Zollar, along with hundreds like it involving other sales, as "proof" that the transaction was proper. When Zollar saw Melvin Reed's phony affidavit, he could not have been fooled. He had seen too many blanks, erasures, improper notarizations, and similar defects on other such documents to believe that the affidavits were genuine. Nevertheless, Zollar routinely issued the certification required by the transfer process that the law and regulations had been complied with. With that certification in hand, Cowan executed the transfer. Zollar treated the certification as a mere ministerial act, not as a protection against improvidence, and closed his eyes to the overreaching he was well aware of.

No one made any effort to prevent the sales because of the decisions arrived at in the sale of range corporation shares. Zollar had received instructions from Rex Lee, deputy commissioner, that his only obligation was to require that a prior offer be made to the tribe.[56] The BIA took the position that it was Cowan's responsibility to protect the mixed-bloods;[57] but Cowan was willing to execute *any* transfer, as long as he had the superintendent's certificate. Meanwhile, his apprentice in Roosevelt was busy falsifying the transactions so that both he and Zollar could close their eyes to the truth.

In a few days, Melvin Reed was on his way back to jail. The drunk charge and car accident violated his parole. Murray reappeared and took Melvin to a tavern to discuss the problem. As Melvin described it, "Well, we went down to . . . a little beer joint on the outskirts of town there, and we went in there and had a few drinks in there. I believe it was on St. Patrick's day, because everybody in the bar was all painted green."[58]

The story is picked up again in Melvin's deposition: "And I told him, no, I didn't want another car. And he asked me, well, how much money I wanted out of it. And . . . I told him that I wanted the $6,500 involved there. He said, 'yes, but you've got your car.' And so he got me over a barrel there. I didn't know what to say, because the car is damaged, and this is true. So I told him, I said, 'Just give me $1,000, and then we'll forget about it.'"[59]

After Melvin sobered up and had time to think about what had happened, he was mad. Nick Murray had been his friend. Everything happened "because I had fouled up," he explained, "because I had been drunk and all that, and I was on my way back here [to prison], and I was just in a state of mind—well, I was just mad, and all, at coming back here and lost all my stock and everything else."[60]




Melvin Reed. Photograph courtesy Melvin Reed.

Melvin approached the transaction with the naïveté created by a lifetime under the paternalistic wing of the BIA. He had understood that he was selling five shares for $3,350 ($3,800 less the $450 he still owed Murray) and was not concerned about the details. He explained the deal in terms of the trust he exhibited in his own life: "When I was taking the papers over there, and I signed these papers and everything, he tells me everything is going to be taken care of. I'm taking him at his word. I'm feeling good, anyway, and I've been out with Nick and all this. I just trusted him as a friend, that he wasn't going to pull a 'goody' over on me, see."[61]

The deception of Melvin Reed was repeated, with variations, on other mixed-blood Uintahs. Letha Harris Wopsock, married to John Wopsock, a full-blood member of the Tribal Business Committee, was getting ready for the Utes' annual Sun Dance. The Wopsocks' chronic problems with credit led the University of Utah social workers to suggest "that Mrs. Wopsock should be under the supervision of a trustee following termination," but the superintendent had not acted on the recommendation. By 1964 the Wopsocks were overextended in their account at the local store, they needed coal and food, and one of the Sun Dance chiefs had requested that Letha be in charge of a concession stand, which required additional cash.[62]

Letha went to b'Gale with her Ute Distribution Corporation stock. She had advertised the stock for sale with the superintendent for $500 per share, but b'Gale told her that he could only give her $300 per share.

"So I sat there a little while," she explained, then asked "can't you give me $50 more?"

"Yes, I'll give you that much more," b'Gale responded.[63]

Letha signed two blank mimeographed forms. One was later completed to show that she had sold the stock to a Mr. Johnson, whom she had never met, and the other was completed as an affidavit in which she supposedly swore that she had received $500 per share from Johnson in cash. In fact, she received an automobile and a small amount in cash, given to her by a used car dealer.[64]

Repeatedly during 1963 and 1964 destitute Indians went to non-Indian merchants and took just about anything offered for their shares, so long as they got the small amount of cash required for their immediate needs. B'Gale and First Security Bank were usually in the middle, brokering the transaction and acting as the purchaser's agent. The Indian sellers signed blank documents, which were later completed and notarized by b'Gale or other bank officers. The superintendent closed his eyes to obviously fictitious affidavits. The Indian usually took a used car for most of the purported "cash" payment. Transactions

were negotiated on bank premises, leaving the impression that the trustee and business manager selected for the mixed-bloods approved. Officials at the bank's main office were aware of John B. Gale's activities but instructed him to conduct them "on his own time." Trust officers in the main office took an occasional "snickle," or gratuity, for assisting.[65]

And so it was that the mixed-blood Uintah Utes, already deprived of the communal landownership essential to their way of life, were also deprived of the most important element of the Euro-American culture they were being forced into—tangible wealth. They found themselves being forced into the cesspools of poverty in Euro-American society. There seemed to be no one to help them and nothing they could do.

# 10

# ENSNARED (THE AFTERMATH)

*The only "freeing" feature in this "competency" bill is to free the Indian of the trust status of his land which has been his sole protection against further exploitation. . . . It is my prediction that this bill, if enacted, would . . . leave the Indian with so little to hope for that he would become an easy prey to the liquidating intentions of the other so-called withdrawal bills, now pending in Congress. . . . Motives behind this bill and others coming from HCR 108 play right into the hands of private interests whose economic ambitions are influenced by human greed to further exploit tribal resources rich in timber, grazing, oil, uranium and others so well protected for the Indian under the present government trusteeship.*

*Joseph R. Garry, May 4, 1953*

The sales of stock in the three corporations followed on persistent requests by Ralph Cowan and Charles Tabb George that the mixed-bloods sell throughout 1961 and 1962. Their solicitations were in disregard of instructions First Security Bank had been given as transfer agent and trustee. In 1959, before he had changed his mind about the private treaty and decided to acquire the range shares for the tribe, John S. Boyden had written, "We trust you will impress upon anyone desiring to make a transfer that there is no possible way of determining the true value of this stock. . . . Discourage the sale of the stock [and] emphasize and stress . . . the importance of retaining said stock. . . . To jeopardize the ownership of the stock may result in unfair practices."[1]

Cowan's and George's solicitation also disregarded the bold red letters Boyden had required to be printed on each stock certificate in the Ute Distribution Corporation:

> WARNING
>
> This certificate does not represent stock in an ordinary business corporation. This corporation is organized for the purpose of distributing to the stockholders in the future their respective share in the proceeds or income from all claims and assets in which the mixed-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, have or will have an interest under the provisions of [the Termination Act]. The future value of, or return on, this stock cannot be determined. This stock certificate should neither be sold nor encumbered by the owner thereof, but should be retained and preserved for the benefit of the stockholder and the stockholder's family.[2]

Cowan knew that no Indians, neither the trust beneficiaries nor their parents, had seen the warning, for at Boyden's request all 490 stock certificates, representing 4,900 shares, were locked in the bank's vaults.[3] No Indian was given possession of the certificate or read the warning prior to publication of the August 27, 1964, termination proclamation, even when they asked.[4] The Indians' stock certificates might be lost, Boyden had explained. They *were* being lost—in unfair practices that the warning might have prevented.

Cowan justified ignoring the 1959 warnings because, strictly speaking, they applied only to the Ute Distribution Corporation. The file on the range corporations did not include the same letter from Boyden. The response to that self-justification, however, is that George held the files on all three corporations in the same drawer of his desk: if the sale of stock in one corporation should be discouraged, then Cowan must have realized that sale of all of them should be discouraged.

He could not believe otherwise, for there was a different and awkwardly worded limitation on issuance or disposition of the stock from Richard Hackford, president of the cattle corporation, in the file on the range corporations.[5] The instruction to discourage selling was consistent with the conclusions of the Meriam Report and seemed to demonstrate that Boyden was familiar with those conclusions and advised Cowan according to them. But that was before the termination policy fell into disfavor and Boyden and Curry decided that the tribe should preserve the land for the full-bloods.

Cowan could see, or ought to have seen, when Boyden presented his offer to purchase the shares out of trust for the tribe in September 1960 that withholding the certificates *encouraged* sales. That was precisely contrary to the instructions the corporations had given him. He was, after all, agent for all three corporations and their shareholders, not for Boyden and the tribe, yet he acted to implement Boyden's new interest and ignored both Boyden's and Dick Hackford's earlier instructions to discourage selling.

If Cowan did not already know that encouraging the mixed-bloods to sell was contrary to their interest, he was so informed when he testified in the suit Margaret Sprouse filed in November 1960 through her lawyer, Milton Oman. Tall, lean, and craggy Milton Oman was a sheep man himself. He had a well-deserved reputation for succeeding with unpopular positions against those in control of the public lands, including the Bureau of Land Management. When its range supervisors rounded up and destroyed a bunch of wild ponies belonging to some Navajos, Oman persuaded Judge Willis W. Ritter, controversial chief judge of the U.S. District Court for the District of Utah, to award the Navajos a huge judgment, reasoning that horses were uniquely valuable to the Indian way of life. Oman was a natural choice as the lawyer for an Indian like Margaret Sprouse and a sheep rancher like Margaret's husband—and a good one. Oman drew the obvious and entirely sensible conclusion that the "tribe" was not a "member of the tribe."[6]

Oman's efforts to protect Margaret Sprouse's rights as a member of the tribe were doomed, however, before they began. Oman did not know that Boyden had conspired with Rex Lee to devise a strategy against the mixed-bloods or that they had met in Washington, D.C., on December 7, 1960, with Curry, Russel Cuch, and Assistant Secretary of the Interior George W. Abbott and had composed a letter for Abbott's signature instructing Superintendent Zollar to proceed with the sales of the stock of the two range companies to the Ute Indian Tribe.[7]

Cowan might also have been troubled by the recollection of the warning he was given when he was helping Boyden block Margaret Sprouse's attempt to retain her shares and exercise her rights as a member of the tribe. Judge Ritter advised Cowan on November 11, 1960, that the "property [should] be held in trust for [the mixed-bloods] until the children at least reach maturity." Ritter elaborated his reasons:

> Now, when the child reaches 21, a young fellow reaches 21 years of age, if you folks have sold out his interest in that property for him, why, he has no home there any more; he has no place to go; he has no place to carry out his farming or grazing operations.

> Now, that would seem to me to be a very improvident thing to do. It is a different situation than with white folks. This is the only place those poor people have known anything about. That is where they have grown up. That is their home land. They can carry on grazing operations over there that they have been accustomed to carrying on, which gives them maybe a poor living, but it gives them some kind of living. . . . And why should we be in a hurry about selling it out anyhow? Do you have to sell it out in order to provide for the care of those people, or are they just pressing you to sell it out so they can buy a jalopy or something.[8]

Obese, crimson-faced, and constantly perspiring, Judge Ritter, a former law school professor, thus pontificated to Cowan on the duties of a trustee, which subject was his academic specialty, as the tissues with which he mopped his brow accumulated on the bench before him. Neither he nor Oman were aware that Boyden had been conspiring with the area director against Mrs. Sprouse. Had they known of Boyden's unfair, unethical, and unprofessional conduct, Ritter would have had sufficient grounds to issue the restraining order Oman requested. But neither Ritter nor Oman knew, and no permanent restraining order was issued.[9]

In 1961 Elmer Hackford and the Hackford clan engaged another lawyer, Hugh W. Colton of Vernal, Utah, to petition Senator Frank E. Moss, who had defeated Arthur Watkins in the 1958 election, and the BIA to amend the regulations to restore the private treaty. "The matter is urgent," Colton explained in his letter to Senator Moss. "The people who have purchased [range shares] do not desire to resell them, but to use the stock certificates as a means of enabling them to continue in the cattle and sheep business, which they have engaged in for the past twenty years or more, and which they will be forced out of if they are not able to hold these stock certificates in sufficient numbers to take care of the cattle and sheep they now own." Colton suggested that "the Secretary of Interior amend the rules and regulations published in August, 1960" to validate the private treaty sales. He stressed that the terminated Utes "were repeatedly told by their legal counsel and the Superintendent of the Uintah and Ouray Reservation, that they should purchase whatever shares of stock might be offered to them, and this they did."[10]

Senator Moss transmitted the request to Stewart L. Udall, secretary of the interior, on March 22, 1961.[11] The soft, unresponsive administrative structure of the BIA ignored the senator, as it had the Indians themselves. There was no change in the regulations. Abbott's instructions to proceed with the sales of the

stock of the two range corporations and to allow the stock to be sold to the tribe were not changed. Acting Commissioner Langan's earlier directions to disregard the Margaret Sprouse offer, even though it was for a larger amount, were not withdrawn. Acting Commissioner Lee instructed Zollar, as requested by Boyden, Curry, and Russel Cuch on December 7, 1960, to proceed with the sale of the stock to the tribe on January 12, 1961.

Boyden thus accomplished the design he had been building on since Rex Curry's telephone calls in early 1959. Mixed-bloods were thenceforth prevented from bidding against the tribe for their own property in any manner.

Some of the mixed-blood livestock operators continued attempts to exchange their stock for land during 1961, not knowing there was no hope after Callie Hackford's long-term lease with the tribe proved abortive. Rex Curry put any further efforts to an official end when he asked the BIA for a legal opinion "whether it would be legal for the Ute Indian Tribe to exchange trust land for shares of stock" in the range corporations.[12] On February 7, 1962, the BIA gave its official opinion "that such an exchange would be invalid."[13] Any possibility of trading the shares for land, as Preston Allen and Elmer Hackford had proposed, was foreclosed, finally and officially.

Other mixed-bloods tried to reverse the sale of the range corporation stock of their children out of trust by asking the bank to repurchase them. "There is a provision in the terms of sale which makes it possible for the stocks which have been sold to be purchased back . . . within five years,"[14] George advised those who made such requests, and promised that he would "try to arrange" for repurchase.[15] When word reached those who lived out of state, like Connie Mack Denver, they specifically demanded that the repurchase option be exercised.[16]

Cowan refused all repurchase requests, however, and continued to press the adults to sell.[17] He furnished Boyden and the BIA with confidential records and other information concerning the corporations to aid the tribe[18] and even sent the stock certificates of those who had not sold to Superintendent Zollar so that the tribe could more easily acquire them.[19] Boyden met with Cowan in April 1962 and requested that the bank solicit the remaining mixed-blood Uintah shareholders to sell.

By April 1962 Boyden had decided to circumvent the BIA opinion that the shares could not be exchanged for land by dissolving the two range corporations after the tribe acquired control. The land would then have to be distributed to the shareholders by way of dissolution, despite the opinion Curry got from the BIA. If the remaining mixed-blood Uintah shareholders did not sell, Boyden proclaimed that they would get only a small tract of the corporation lands.[20] The bank again contacted the parents of the trust beneficiaries, at

Boyden's request, and told them that it thought it best that they sell.[21] Cowan directed George to phrase the new letter thus: "We are advised that the Ute Tribe now holds more than 90% of the stock of each company and the stockholders have voted to dissolve the two companies."[22]

The BIA and Boyden thus conspired to defeat the rights of the mixed-blood Uintahs. From all the evidence, no thought was given to the fact that the mixed-bloods were still under the guardianship of the BIA until at least August 27, 1961, and that the United States had trust responsibilities over their property until August 27, 1964, or that the government was obligated to act in the interest of *both* Indian groups. Nor does the written record indicate any concerns about Boyden's solemn promise in his employment contract that in the event of a conflict he would represent neither of his client groups.

There was no investigation into the circumstances leading to the disregard of those promises. The *only* response Senator Moss received was a letter dated June 20, 1961, from the commissioner of Indian affairs, John O. Crow, stating that "the situation which had developed over this matter . . . appears to be working out, generally, to the satisfaction of those concerned."[23] Crow was the very party whose promises were being disregarded, yet he answered Colton's objections to Moss. "Those concerned" must have meant Boyden and the tribe, for the Uintah livestock operators were still being denied access to the range, and the BIA's policies toward them remained unchanged.

Cowan acknowledged, "We were bound to follow [the corporation's] instructions."[24] But he continued to help Boyden acquire the range corporations for the tribe rather than caution the trust beneficiaries and their parents against selling. Cowan sold virtually every share controlled by the bank, even those held by individuals George had not contacted.[25]

The danger that Judge Ritter warned Cowan about from the bench in the Margaret Sprouse suit had become a reality:

> Suppose the true bloods get control of the mixed bloods' corporation, grazing operation. You are going to have a whale of a conflict out there, aren't you, as to whose cattle are going to be grazed where, whose sheep are going to be grazed where? The true bloods have their own livestock and now they are in control of the mixed bloods' corporation, and isn't this going to lead to a squeeze play on the remaining members of the mixed blood group who retain their stock? Aren't they going to be at the mercy, just as a minority stockholder in any corporation is at the mercy of a majority stockholder? Now, do you think that is prudent?[26]

Instead of heeding Judge Ritter's advice, Cowan acceded to Boyden's wishes. That seemed the proper thing to do if he was interested in the business of the full-bloods.[27] Besides, Ritter was a notorious "bleeding heart" for the Indians while Boyden was the acknowledged "expert" on Indian affairs.

By 1962 less than forty mixed-blood Uintahs still held their stock in the two range corporations: Preston Allen, those who remained among the thirty-three livestock operators, and a handful of others like Lorena Iorg, Lena Sixkiller, and Colin Murdock. Many of them held on for sentimental reasons associated with identity with the land. Cowan and George had written another letter to them, urging them and their children to sell.

"The Tribe would not let us use their range, because we had not sold," Lorena Iorg explained in a letter to her brother, Connie Mack Denver, in 1962. Connie was living in Los Angeles under the relocation program. George had contacted him, urging him to sell his children's stock. Lorena described how she, Lena, and Colin continued to resist giving the tribe their shares.[28]

Lorena met with Area Director Haverland and found him more sympathetic to the mixed-blood Uintahs' plight. Possibly Haverland began to see the unfairness of what had happened when his superiors had ignored his objections to the elimination of the private treaty. "He is with us on the division," Lorena reported to Connie. "He feels that the Tribe should give us our share of the land. This would amount to about 350 acres per share, so this would give you about 3,150 acres for you and your family."[29]

"The Superintendent and the tribal attorney told me I could never get land if I held on to the stock," Preston complained in disbelief. "It was our understanding that if we didn't sell to the tribe that there was no way [we] could get land from the animal units on the land."[30]

As Judge Ritter predicted, pressures on the few remaining holdouts continued.

"Those of us who have not sold to the tribe are having a hell of a time trying to get some range," Lorena said. "When I told Mr. Cowan I would like to buy some of the minor children's stock, he said 'I'm sorry, but you can't buy any because we're in the process of making a deal with the Ute Indian Tribe.'"[31] The mixed-blood Uintahs who needed the range should have been considered first, particularly for their own children's share of the range, for the bank had contracted to give consideration to the needs of parents of the minors.

"The stockholders who didn't sell received threats from the tribe that they would raise the assessments," Lorena explained. "And they said if we didn't pay within thirty days they would foreclose on us and take our stock. . . . I just made up my mind we wasn't selling and that was it and I wasn't about to go. I

didn't feel like selling, because the land was important to me. You know, the vanishing Indian, and I'm proud of my Indian blood and I want to be known as part Indian. I also wanted to find out more about it."[32] Lorena realized that her Indian way of life was intimately associated with the stock.[33]

Pressures to sell were increased when Rex Curry, fortified by the opinion that the shares could not be exchanged for land, demanded that Colin Murdock and his brother Mac, along with the other officers of the range corporations who refused to sell, be replaced with representatives of the tribe. On January 25, 1962, the tribe announced that it would determine range policies according to the needs of the tribe and that mixed-blood Uintah shareholders who had not sold would not be given access to the range. The mixed-blood representatives refused to resign or to call a meeting at which they could be voted out of office, so Curry called a meeting on behalf of a majority of the stockholders, which was the tribe. Helpless, Colin and Mac resigned rather than face being voted out.[34]

The directors of the Ute Distribution Corporation were rendered meaningless fixtures in much the same way. The Termination Act provided that the minerals were to be "managed jointly" by the distribution corporation and the tribe.[35] Joint management was necessary because Congress knew that the mixed-bloods were but 27 percent of the combined groups. John Boyden nevertheless persuaded the commissioner to change the regulations, substituting "joint management" with "proportional" management.[36] That left the tribe in control; it owned 73 percent of the joint mineral estate as the representative of the full-bloods. The mixed-bloods were reduced to mere spectators while Rex Curry made all of the management decisions as business manager of the tribe.

The tribe and the three mixed-blood corporations were, for practical purposes, one and the same, and the mixed-bloods who had not sold their stock were at the tribe's mercy.[37] The tribe's business committee elected the directors of the two range corporations. The United States had control over the minerals as trustee for the tribe's 73 percent. After its stock purchases, the tribe also controlled the range. Lorena, Lena, Mac, Lula Murdock, and Sarah Hackford, matriarch of the Hackford clan, directors of the Ute Distribution Corporation, were reduced to mere clerks, transmitting checks for the proceeds of the mineral leasing to the shareholders, who were now the tribe and non-Indians.

As Preston and those who still held their stock tried to resist the mounting pressures to sell during 1961, 1962, and 1963, Cowan, George, and the bank left little doubt that they were fully committed to helping Boyden and the tribe acquire the mixed-bloods' share of the range and to disregarding their instructions to discourage selling. By the spring of 1962 there were so many repur-

chase requests that it was obvious the fifteen shares subject to the option were not enough.[38]

"In all confidence with you," George reported to Merrill Millett, branch manager of First Security Bank in Roosevelt, in April 1962, "as you probably well know, some of these Affiliated Utes have received word via the grapevine that it would be best to repurchase their stock certificates because they are going to get a 'real sharp deal' from the same. The word has gone around that the corporation will dissolve or that it will at least give property to the Affiliated Utes in return for their shares of stock and that this property will be worth much more than what they received for the sale of the stock."[39]

George's letter indicated that his information had been discussed with Cowan and that Cowan had "discussed the matter with Mr. John Boyden."[40] Thereafter, George ignored his earlier statements that stock would be repurchased for those who requested it. He told those making such requests that "repurchase of the stock was in the discretion of the trustee"[41] and that "the Trust Department is making no repurchase of stock."[42]

"We would not want to favor one family over another" was the justification given. "You can see the problem that might present itself if a lot of these Affiliated Utes get word that their stock was sold at too low a price . . . and that they will get much more out of the land through the repurchase of their stock."[43]

Despite the mixed-bloods' requests, Cowan "decided not to repurchase any of the Rock Creek Cattle or Antelope Sheep Range stock."[44] "It is our understanding that upon dissolution of the corporations, each of the stockholders, other than the Ute Tribe, would receive small parcels of land. . . . It is our thought that the trust will be better off if we accept the offer of the Tribe to buy the stock since the number of head of sheep or cattle which could be grazed on the land would be negligible," Cowan wrote to the remaining mixed-blood shareholders in April 1963.[45] George followed up with similar letters the same month and again in May.

"Under no circumstances is my minor children's certificate to be sold," Lena Sixkiller demanded when she received George's letters. "The $1,100 the Ute Indian Tribe is paying is not enough."[46] Every other parent of a mixed-blood Uintah still owning stock had the same reaction, some pointing out that "each certificate is equal in value to 350 acres of land," which would "give the children a sense of 'belonging' and having ownership in something tangible." Considering the value of the land and its importance to the Ute way of life "there really isn't much point in selling the certificates for only $1,100."[47] *All* of the parents who received the April and May 1963 solicitations rejected them.

Elmer Hackford learned that the tribe resolved to liquidate the range corporations and that those who held out and did not sell their stocks would get a share of the land. The Hackford family had explained to Merrill Millett on May 14, 1962, that "the children have approximately 25 head of cattle and have been waiting [for] repurchase so that the cattle could be put on the range."[48] When Elmer's brother Dick learned of the tribe's plans to liquidate the range corporations, he wrote to George on June 7, 1963, pointing out that the five-year period of the repurchase option would be up in November 1963. He directed, "Would you please see that the stock in the sheep and cattle corporations be purchased back from the tribe."[49]

No repurchases were made. Cowan still made no investigation into the fairness of the sale. He and George continued to solicit the Uintahs to sell at the tribe's authorized price.

Richard Hackford wrote to George again on July 6, 1963, pointing out that he was guardian for his children and again directing, "Would you please see that the stock in the sheep and cattle corporation be purchased back from the tribe."[50] He then employed Vernal attorney John C. Beaslin to press his demand. "It would not be proper to favor one minor for whom we act as Trustee over another," Cowan replied to Beaslin.[51] Either not knowing or not caring about the area director's refusal to approve the lease Callie negotiated with Rex Curry, George suggested that they should lease additional range from the tribe.[52]

On February 28, 1963, the Tribal Business Committee resolved to dissolve the two range corporations "to try to get the land back into trust status." On March 2 the officers of the range corporations, who were now the Tribal Business Committee, formally resolved to dissolve.[53]

Now that the tribe was in control, it became possible to trade the shares for land after all despite the legal opinion of the BIA to the contrary dated February 7, 1962. The only apparent difference was that exchanging the shares for land was now in the interest of the tribal attorney or his client.[54]

The minors who were trust beneficiaries had no better luck with Cowan when they became adults than had their parents. By the fall of 1964, Connie Mack Denver, Jr., living in Los Angeles with his father, became an adult and wrote to the bank asking that his stock be repurchased. The sale "was done without the permission of my father . . . or myself," he pointed out.[55]

The bank refused, reasoning that "the trustee was given the sole discretion to hold and manage these properties in a manner which he felt would be of the greatest advantage to the beneficiary."[56] The bank either ignored or forgot the provision that in doing so consideration should be given to the needs and aspirations of the beneficiary and his family. "A check in the sum of $5,203.88

was sent to you. . . . It is hoped this money has been used wisely," Connie, Jr., was told,[57] as if to threaten him into silence, or as if that modest sum could compensate him for the loss of more than 350 acres or the cultural values associated with it.

Lorena, Lena, Mac, Lula, and Sarah had succeeded Preston as "authorized representative" when they were elected officers of the Ute Distribution Corporation by the handful of Indians who still held stock. By then the three corporations represented mixed-blood Uintahs in name only. The tribe had over 90 percent of the stock in the range corporations, and non-Indian purchasers owned the majority of stock in the Ute Distribution Corporation.

Twenty years later, under oath, Boyden denied having more than casual knowledge about the Margaret Sprouse lawsuit and the events surrounding it. "I don't know whether I participated in it or not," he said. "I have a doubt that I did."[58]

The ultimate act of duplicity—and confirmation that the mixed-blood Uintahs had been misled from the beginning of the termination program—came when the range corporations were liquidated and all of the mixed-bloods' 27 percent interest in the range, minerals, and other joint resources were returned to the tribe and the few remaining shareholders. On July 13, 1964, the representatives of the tribe met with Lena Sixkiller, Lorena Iorg, Colin Murdock, and the thirty-five other mixed-blood Uintahs who remained as shareholders to propose a formula for dissolution of the range corporations.[59] Rex Curry proposed that the remaining shareholders sell their stock for cash. All of them rejected Curry's proposal, as they had done in the past. The meeting ended in a stalemate. The tribe then filed statements of intent to dissolve the corporations with the secretary of state of Utah and petitioned for a court-supervised liquidation of the two corporations.[60]

John Boyden was right in the middle, where he always seemed to be when Indian rights were at issue. He acted as attorney for both corporations and also for the tribe[61] while the remaining mixed-blood Uintahs secured lawyers and presented their own plan. "Attempt[s] to reach an agreement whereby the assets of the corporation could be equitably distributed" to the minority shareholders "have been to no avail and the shareholders of the corporation are, therefore, presently deadlocked," Boyden reported to the court in the 1962 petition.[62]

While the negotiations dragged on, Preston Allen succumbed to the financial pressures termination imposed on him and sold his range stock to the tribe. After several years of negotiations, conducted at arm's length, the tribe and the thirty-eight remaining mixed-blood Uintahs submitted a joint plan,[63] which the court approved in October 1966,[64] distributing 14,150.56 acres to Lena, Lorena,

and the other holdouts, including First Security Bank as trustee for fifteen who were still minors, which averaged 372.38 acres each.

Holdouts were thus getting what Preston, Elmer, Callie, and the other mixed-blood Uintah livestock operators had wanted all along—individual tracts of land rather than stock in corporations. The balance of 156,272 acres allocated to the mixed-bloods in the plans imposed on them in 1957 was returned to trust status with the BIA.[65] The net effect was that the mixed-blood Uintahs were eliminated and the White Rivers and Uncompahgres became the beneficiaries, together with the minority of full-bloods who were Uintahs.

Did John Boyden, Francis McKinley, Rex Curry, and Robert Bennett intend that result from the beginning? There is no evidence in the written record that they did. It is clear, however, that they intended from the beginning to solve the "mixed-blood problem"—by "getting rid" of the mixed-bloods. It is also clear that they seized on every event to benefit the tribe, as representative of the full-bloods. And it is clear as well that Boyden, at least, and BIA officials who acted on his requests actively precipitated the events that resulted in benefiting the tribe and harming the mixed-bloods.

Art Workman's worst apprehensions during termination had come to pass. Art could now see that the holdouts were getting the land he wanted all along—and much more than the 120 acres he asked for. Jealousies were to be expected. The holdouts knew that they got what all of the mixed-bloods had been entitled to from the beginning—not because they were more astute but because they were more stubborn and less willing to trust Boyden, Cowan, and the BIA.

Lorena, Lena, Mac, Lula, and Sarah were nevertheless obliged to issue checks for the annual dividend. They were stunned to learn about the extent of wealth in the reservation lands they administered as officers of the Ute Distribution Corporation. There were 1,236,000 acres on which the tribe and the corporation jointly owned mineral rights, including the rangelands held by the two range corporations, lands held by the tribe, and lands taken by individual Indians in the division.

These lands had produced approximately $2,245,300 in royalties from oil and gas leasing, with an annual lease income of more than $231,000. The reservation also held one of the largest coal reserves in the United States, amounting to more than 381,919,940 tons, along with more exotic minerals such as gilsonite and trona. The most valuable mineral, however, was oil shale. Known reserves of recoverable oil in oil shale were more than 110 billion barrels. Though undeveloped, the technology for producing oil from oil shale

was well known and the United States Geological Survey reported that oil could be produced from shale at prices as low as 26 cents per barrel.[66] If and when these reserves were developed, they would make the Utes wealthier by far than the sheikhs of the Middle East.

The plan imposed on the mixed-blood Uintahs delegated the management of the enormous resources to the Ute Distribution Corporation. Now, however, most of the stock had been sold and belonged to non-Indians. The mixed-bloods had no idea of the mineral values when they sold their stock. Because of the way in which their stock certificates were deposited with First Security Bank and the sales were conducted, they could not possibly have known.

Lena, Lorena, Mac, Lula, and Sarah issued checks to Judge b'Gale, Nick Murray, and hundreds of others—virtually all of them non-Indians. The dividend was $143 per share. The dividends from the Spanish Fork claim amounted to $462 per share. All of that money was to have compensated the Uintahs for the loss of their lands at the time of the treaty with Old Tabby; but because of the stock sales, non-Indians shared in the $7.7 million settlement Preston Allen and Art Workman had gone to Washington to help Boyden negotiate. The mixed-blood Uintahs would see little of it. Another $248.50 per share came from oil and gas leasing.

Every mixed-blood's ten shares of stock had already paid $7,105.00 in dividends, and that was merely a start. There would be more such payments in the future.[67] John B. Gale had purchased sixty-three shares of Ute Distribution Corporation stock.[68] Other non-Indians purchased more than Gale. All of them must by now be wealthy men.

It pained Lena, Lorena, Mac, Lula, and Sarah to make out the dividend checks. Non-Indians were receiving the Uintahs' heritage. Those like b'Gale who were reaping the benefits were the very persons who had been hired to protect the mixed-blood Uintahs from their improvidence and who had breached that trust to satisfy their own greed. Nothing could be done about it. Lena, Lorena, and Colin may have discovered why the termination program had not worked, but it was far too late to do anything for the mixed-blood Uintahs as a group.

Termination was renounced by President Richard M. Nixon in a 1968 campaign pledge to the National Congress of American Indians.[69] Secretary of the Interior Walter E. Hickel reaffirmed Nixon's pledge in October 1969, declaring that the administration "is dedicated to improving—not destroying—that special relationship."[70] Louis R. Bruce, commissioner of Indian affairs, stated, "While I am around there will be no question of termination even when the tribes want it because we should take a careful look at these mistakes."[71]

Nothing was ever done to correct the mistakes of the Ute Termination Act, however, or to restore the mixed-blood Uintahs to their property or deny it to those who wrongfully appropriated it, including the Ute Indian Tribe of the Uintah and Ouray Reservation. The mixed-blood Uintahs remain abandoned between two worlds.

# CONCLUSION

*I know how bad the conditions are among our people . . . but I believe that our people should have meetings and discuss the thing. We all know that something should be done. The people don't want to meet any more, they seem to be discouraged and have given up hope. . . . It looks like we are going down instead of up. . . . Somehow the Indian people were not informed. The committee took over and the people have not or were not given the chance to see and go over the final bill. . . . Where do we go from here? . . . There should be some way to work out these things and the hatred that exists between the people. There should be ways of ironing this out so that every one should benefit from what we have.*

*Oran Curry, November 20, 1957*

It was November 1963, one of those rare mornings only country people are privileged to experience. There was no trace of the haze, smoke, or noxious fumes that city dwellers mistake for air. The atmosphere was laden with the wonderfully subtle aromas of the countryside—a waft of juniper drifting down from the flanks of the Uintah Mountains and the rancid yet ripe aroma of stockyards unused for several years, sharpened by the crispness of the onset of winter.

Preston Allen, with one western-cut boot hitched on the bottom rung of the tumble-down rail fence and his Stetson cocked back, the better to receive the morning rays, was nigh oblivious to the beauties surrounding him. He was on his way to Liz Bumgarner's funeral and was having a pensive moment with himself, contemplating the events of the previous fourteen years.

The stockyards at Preston Allen's modest little Altonah ranch were no longer in use and were showing the beginning stages of decay. He continued to hold onto his and Juanita's shares in the two range corporations, essential to the success of his beef cattle operation; but when First Security Bank offered all of the shares held in trust for the minors and incompetents in a block, it was no longer possible to secure necessary grazing rights. Preston Allen contemplated, as he stood there, that like Callie Hackford he too would soon have to sell his shares. No mixed-blood, other than perhaps Margaret Sprouse, had the $161,700 needed to compete with the tribe in that sort of purchase; and even Margaret's attempt to do so was crushed when Superintendent Zollar disqualified her as a purchaser, on the theory that using money acquired through marriage to a non-Indian made her offer a "subterfuge."[1]

After he was forced out of the livestock business, Preston had been compelled to sell his ranch, which was on Indian land taken as part of his distributive share, to a non-Indian. His optimistic dreams when he returned from World War II had gone aglimmering. His ranch would soon, no doubt, join countless rusting windmills, solitary chimneys, groves surrounding ghosts of homes, and haunted houses dotting rural America—silent sentinals of shattered dreams.

Preston was helpless as his ranch joined other tracts of choice Indian land passing into the control of Euro-Americans, just like those in the allotment era. Forced from the land, Preston and Juanita now worked at the Baptist mission's home for Indian children.[2] There were approximately twenty-five children there, ranging in age from babes in diapers to youngsters of fifteen. Juanita cooked and cared for the children while Preston looked after the custodial duties. It was a step down, to be sure, for one who had been the leader of the Uintahs a decade earlier, but there was no room for false pride. After all, these were Indian children, and it was better to be looked after by their own people.

Preston reflected on the events leading up to termination. Arthur V. Watkins of Utah, the principal proponent of the policy, had said, "I see the following words emblazoned in letters of fire above the heads of the Indians—These People Shall Be Free!"[3]

The Uintahs had been more "free" than Watkins recognized. They had been free to remain in the Uintah Valley, to share nature's bounty and the simple pleasures of their lives with one another, according to Indian customs. They had also been free to leave the Uintah Valley and go to Denver or Albuquerque or any other large city, where they could lose their identity in the scramble for jobs and the acquisition of personal property. They made that choice every year, but they had also been free to change their minds and come

home to the reservation. Those who stayed in the cities had been free to come home for the Bear Dance in the spring or the Sun Dance in the summer and share in their culture. So viewed, the Indians were more free, not less, at least before Watkins's termination policy.

Why had Watkins felt that he must deprive the Utes of making their own choices? The Indian heritage was an important thing to Preston, not a yoke to be shed. Why had Watkins ignored the warnings of the Meriam Report that "leadership will recognize the good in the economic and social life of the Indians in their religion and ethics, and will seek to develop it and build on it rather than crush all that is Indian"? Why had they been unable to comprehend that "Indians have much to contribute to the dominant civilization, and the effort should be made to secure this contribution"?[4]

Being "free," in Watkins's lexicon, evidently meant being prey to exploitation and having the plain meaning of words like "members of the tribe" constantly changed to suit the designs of others. Evidently one could not be "free" unless he or she walked, talked, and acted like Euro-Americans, even like Mormons.[5]

The most admirable features of the Indian culture had been the undoing of the mixed-blood Uintahs. By nature nonacquisitive and nonexploitive, nurtured in a spirit of trust, generosity, and sharing, valuing communal property rights more than private property ownership, they could not cope with intangibles like business corporations. These alien concepts, devices of another, more aggressive culture whose people were more predatory, had been forced on the Uintahs by the Termination Act. Forcing such concepts on the Uintahs, or any Indians, was an invitation to mischief. It virtually assured that they would be separated from their property.

Indians of the Northwest practiced a ritual called potlatch, an orgy of giving. The most honored man in the community was the one who gave the most. The result was that the most honored man was also the poorest in material possessions. That was of small consequence, for at the next potlatch he received in return.[6]

The Utes' culture did not include potlatch. Early explorers and trappers reported them to be more people of commerce than those of the Northwest. Even so, there may have been some common currents in these neighboring cultures. Perhaps cultural traditions like potlatch helped explained why Melvin Reed and others like him were so easily separated from their property.

When Dominguez and Escalante entered the Uintahs' territory in 1776 as their first recorded visitors, they were treated graciously. The Uintahs invited the Spaniards to live among them, offering them all of the land they wanted for homes and protection from danger.[7]

The Uintahs' great war chief, Wakara, went to the migrating Mormons seventy-five years later and told them to take all of the land they wanted but not to take the game.[8] Old Tabby agreed to move his Uintahs from the fertile valleys of central Utah to the relatively poorer Uintah Valley. Ouray gave the mineral-rich western slope of the Rockies to the miners, asking only that they not go into the valleys and chase the game away.[9]

Perhaps these men, in Utah, Colorado, and elsewhere, who yielded aboriginal lands without a fight, were wiser than Euro-American chroniclers credit. Perhaps yielding most of Utah and Colorado was expressive of something in the Indian culture akin to potlatch. Perhaps Old Tabby and Wakara recognized that accepting and accommodating to the relentless tide of civilization, if a small piece of their traditional range could be preserved—even the least desirable part—was essential to preserving the Indian way of life.

Perhaps there are greater outrages against the Indian than a frontiersman taking his property by trickery or even at gunpoint. The Uintahs were willing to share their territory with others, at least in ancient times; but moves against their way of life that were the inevitable effect of the termination policy were a far more serious matter.

By contrast, the Euro-Americans rewarded the peaceful conduct of the Uintahs with cruelty. Take the Uintah youth, whom Fathers Dominguez and Escalante dubbed Joaquin, as an example. He attached himself to the explorers in western Colorado and guided them to the home of his people, who they called Lagunas, in the Timpanogo. Joaquin protected the padres when they reached the home of his people, even sleeping at their side. The Uintah lad remained devoted to the Spaniards, accompanying them, near-starved, on their perilous expedition through the lands of the Paiutes, across the Colorado River gorge, and through the lands of the Hopis and Navajos to Santa Fe. Doubtless, he did these things because the padres had assured him that they "loved [the Utes] as our greatest friends." Yet when they reached Santa Fe, Dominguez and Escalante dealt strangely with their "greatest friend." They simply "presented . . . the Laguna Indian" to the Spanish governor—as if he were a slave, or less, an animal they found wandering in the wilderness.[10]

In present times, the bank, Boyden, and the BIA acted contrary to the advice and promises given to the mixed-blood Uintahs as a group and to Callie, Elmer, and Preston in particular. Reneging on the promised private treaty was a particular blow to the Uintahs' property and prospects for becoming self-sufficient.

Looking back on the events of the past decade or so, it was clear that the mixed-blood Uintahs trusted others too much. Yet that is what they had been

conditioned to do by generations of life under the guardianship of the BIA. They trusted Boyden. They trusted the policies that the BIA set for them, designed by Boyden.[11]

In a more realistic sense, though, the problems went much deeper than Boyden and his performance. The policy of the law was simply misguided. It was really a return to the errors of the General Allotment Act of 1887.

"That was 66 years ago," Watkins said, brushing aside objections that termination would repeat the mistakes of the General Allotment Act. "If we have done any job at all, there should be great progress since then."[12] Yet the experience of the Utes proved that virtually nothing had changed.

The promise of the Termination Act and its architects that the mistakes of the allotment system would not be repeated and that Indian lands would be protected and preserved for "members of the tribe," both mixed-blood and full-blood, so they could prepare for the end of government supervision and control, was turned against those who were to have been its beneficiaries. Denial of the private treaty guaranteed that all of the mistakes of the allotment system would be repeated.

It was ironic how the outrages against Indians and their property seemed to be repeated. It was a century, almost to the year, since the Treaty of Spanish Fork. The government agents ignored the promises made to the Uintahs at Spanish Fork that the Uintah Valley would be their exclusive home forever and moved the White Rivers and Uncompahgres onto the Uintahs' land two decades later.

It was little more than two score years later that the government agents ignored the promise that "no white person" would be permitted in the Uintah Valley without the Uintahs' consent and opened it to homesteading in 1905.

In 1938 the government promised the Uintahs and the other two bands that they could keep their individual identities, social structure, and property if they accepted incorporation under the Wheeler-Howard Act with the other two bands, but that promise was ignored little more than a decade later when it imposed the share-and-share-alike amendment on them in 1950.

The government ignored the share-and-share-alike amendment a mere four years later when it enacted the Termination Act, separating the Uintah Utes, or at least the largest number of them who were mixed-bloods, from property that had been theirs exclusively in 1950.

Now the government had forgotten again. It had disregarded the promise in the Termination Act that the mixed-blood Uintahs would have the right to protect what little property they had left by "private treaty." The consequence of the most recent broken promise was that the remainder of their lands were

delivered to the White Rivers and Uncompahgres, constituting most of the full-bloods, who had had a doubtful claim, if any at all, to the land a mere fourteen years earlier.

Those with a penchant for disrupting the Indian way of life had changed their rhetoric hardly at all. "The fundamental idea upon which our cosmopolitan republic rests is opposed to the encouragement or perpetuation of distinctive national characteristics and sentiments in our midst," the proponents of the allotment policy had proclaimed. "If the Indian cannot learn to forgo such of his habits as are peculiar to savage life, and such of his political opinions and sentiments as are not in harmony with the general policy of our Government, then he cannot, beyond a limited period, exist among us, either as a nation or as an individual."[13]

Even as Congress made those declarations in 1869, Brigham Young was establishing his own society on Uintah Ute land, based on sentiments not in harmony with the general policy of the national government. Indeed, the entire nation was an amalgamation of people who had migrated from their native lands to preserve widely disparate cultural identity.

Had Watkins been cynical, or merely blind, when he advanced similar arguments to justify the termination policy while being himself a member of a peculiar religious group? Were the massive holdings of the Mormon church and its vaunted welfare system different from those of the Indians, aside from ethnic origins?

The non-Indians who controlled U.S. policy toward American Indians, like Arthur Watkins and John Boyden, had ignored the warnings of the Meriam Report that if the Indian's traditional system of communal land-ownership was disrupted and the Euro-American system of individual ownership forced on them, they must be afforded the means to assemble an efficient farm or ranch. Otherwise, the very features of the Indian way of life to be admired most such as generosity and sharing would be the source of their undoing.[14] "The solution," the Meriam Report concluded, "appears to be for the government to vigorously exercise its power of guardianship" and assure that proceeds from the sale of lands "should be expendable only for land or other productive purposes."[15]

It was as if Watkins and Boyden were using their control over Indian affairs to implement Mormon doctrine. A familiar tenet of Mormonism was that if the Indians would accept the Mormon religion, "many generations shall not pass away among them, save they shall be a white and delightsome people."[16] Indeed, Mormons claimed a special license to interfere with and change Indians' lives—to "convert" them, as they put it. The Mormons even claim to

have been directed by their God to convert the Indians to the Mormon way of life and persuade them to abandon their own culture.[17]

In pioneer times, Uintah children were regularly purchased—often to protect them from death or sale into slavery—but sometimes kidnapped by the Mormons to be indoctrinated into their culture.[18] Modern Mormons continue that practice, inducing Indians made destitute by government policies, or otherwise, to let them take their children from their homes and transport them hundreds of miles away to be reared and educated (read: indoctrinated) in Mormon homes. Watkins claimed that one of his signal achievements was the establishment during the 1950s of the Intermountain Indian School at Brigham City, Utah,[19] to which he transported Navajo children from their homes hundreds of miles away. Perhaps Watkins's Mormon background may explain his disdain for the culture and beliefs of others. The Baptist Children's Home where Preston worked was at least an opportunity for some Indian children to be reared in the Indian culture.

If only the mixed-blood Uintahs, and the full-bloods too, for that matter, had been permitted to follow their own custom of making decisions through the council of elders, how different might this story be? It is difficult to say; but the older, wiser Utes like Old Jim Atwine, John Pawwinnee, Bill Reed, and Oran Curry understood the Indian culture and why devices of another culture such as business corporations were ill suited to it.[20] They had the wisdom of years that equipped some of them, at least, to resist temptations such as the per capita payment always dangled before the Utes when Watkins, Boyden, or the BIA wanted some particular action.

When the Ute Tribal Business Committee, or younger and less experienced Utes, including Preston himself, were thrust into decision-making roles in place of the council of elders, the Utes were denied their way of life and the wisdom of their elders. When decisions were preempted by employees of the BIA or the Wheeler-Howard Act corporation, like Francis McKinley, Rex Curry, and Ab Harris, who had been educated by Euro-Americans and who lived most of their adult lives away from the Indian system, the moves against the Indian culture were compounded.

The termination process might have been different if the mixed-blood Uintahs had been allowed to employ their own attorney. The land might not have been returned to trust status and they might have had someone to press demands for individual parcels of land rather than stock in the corporations, just as the holdouts had done. Even if the corporations had been forced on them, they might have had someone to contend for them that the private treaty was the key to the stock's value and should be preserved in accordance with the promises

made to the mixed-blood Uintahs. The livestock operators might have had someone to argue that the promises of preferred rights in the range be respected.

It was neither discovered nor observed that the promises made to the mixed-blood Utes had been ignored to accommodate the acquisitive desires of Boyden and the tribe until it was too late. No one observed that the AUCU had not been afforded independent counsel, and the views and needs of its members were never considered in the adoption of the regulations. If the mixed-blood Uintahs had an attorney of their own things might have been different.

"No man can serve two masters" reads the familiar phrase in the Christian Bible.[21] Boyden had proven the words true. The events of termination had also proven that nothing changes much in human affairs. Watkins, Boyden, and the Superintendent "did unto" the mixed-blood Uintahs just as Brigham Young and Felix Brunot had "done unto" Old Tabby and Ouray, as Inspector McLaughlin had "done unto" the Utes when the Uintah Valley was opened to homesteading, and as Senator Dawes had "done unto" the Utes in enacting the allotment policy in 1887. "They promised they were our friends, but all they wanted was our land,"[22] Red Cloud had lamented in his day, and it was still the same.

For those not in the livestock business, shares in the corporations were just like the "surplus lands" of the Oklahoma Indians during the allotment era. That experience had shocked the nation with the knowledge that even educated and sophisticated Indians, given their value system based on communal rights, would be anxious to convert fractioned interests they had no immediate use for into cash.[23] They would do so either because they had become destitute or because they were frustrated with being cut off from the Indian way of life. For the Utes, placing the land in corporations increased that tendency, for it was converted into an intangible asset they had little experience with, and elimination of the private treaty made it of no use even to those who owned cattle or sheep. The shares in the corporations became the first thing the Indians tried to sell. Ab Harris demonstrated that even experienced, able, and sophisticated Indians were still prone to losing their property.

When the mixed-blood Uintahs were further denied the right to finance the purchase of shares, they were prevented from adopting the Euro-American way of doing business, which was the declared purpose of the termination policy. The effect was further confusion and frustration, which forced them to sell their property, for they were left with individual shares so small that they could not be efficiently used.

Preston Allen's ranch, along with other mixed-bloods' farms and ranches, was destroyed by the termination policy. The little log house at Altonah stood vacant.[24]

Many other of the principal mixed-blood Uintahs were now gone. Art Workman, good-natured and affable, had withstood the ravages of termination about as well as any; but after foreclosure of his mortgage on Sam-N-Liz's Store, there was nothing for him on the reservation. It was ironic that First Security Bank would not accept his stock in the Ute Distribution Corporation in discharge of or as security on the loan, but Judge b'Gale eagerly took it for sale to an out-of-state client of the bank. Finally jobless and destitute, Art moved to Salt Lake City where he secured night work as a janitor.

With so many mixed-bloods out of work and facing rejection by the tribe and government officials when they attempted to enroll in assistance programs, or even get health care, alcoholism became rampant on the reservation. Nor was the problem confined to the mixed-bloods. The minority of Uintahs who were full-bloods and still part of the tribe—people like Waubin Wanzitzs, Maxie Chapoose, and Sidney Atwine—were also affected by being cut off from their own people in the mixed-blood group. Many of them also resorted to drinking and sometimes abandoned their children. The lucky children had relatives who could care for them or lived in homes like the one where Preston and Juanita worked.

It was tragic that Indian children, or their parents, should end up destitute recipients of charity. A century before, the Uintahs owned the largest part of central Utah. After the Treaty of Spanish Fork they owned the entire Uintah Valley. Even after the share-and-share-alike amendment in 1950, they still owned roughly a third of more than one million acres and a share in millions of dollars in Indian claims. If enormous assets like those were taken from them, they should be cared for, and generously, by the Euro-American society that took their property. It is not asking for charity to expect support from one's own assets.

Euro-Americans, including their senators and representatives, who look on Indians as welfare recipients clearly do not understand. Indians receiving per capita distributions from the operation of their own communal property are not receiving a windfall, surely not like farmers receiving crop subsidies or investors in tax shelters, or railroads receiving land grants, or defense contractors subsidized by government grants—or the vast, tax-exempt properties of the Mormon church and other religious institutions.

A person's attitude toward life and nature really had more to do with his or her Indianness than skin pigment or the origin of his or her parents. Was it possible that all of the talk about "freeing" the Indians was an expression of simple bigotry?

Non-Indians originated the practice of calling persons of mixed ancestry "half-breeds" or "mixed-bloods," with the implication that they were less than

Indian and not quite Anglo. Worse than the racial slur implicit in such terms was the demonstrated misunderstanding of what it means to be an Indian.

The Uintahs recognized those raised and educated in their customs and those who had adopted the Uintah way of life as Indians. Before the coming of the Mormons, Uintahs freely adopted members of neighboring tribes and bands and even trappers. Their membership in the Uintah band was determined by the respect they commanded, not by their "blood."

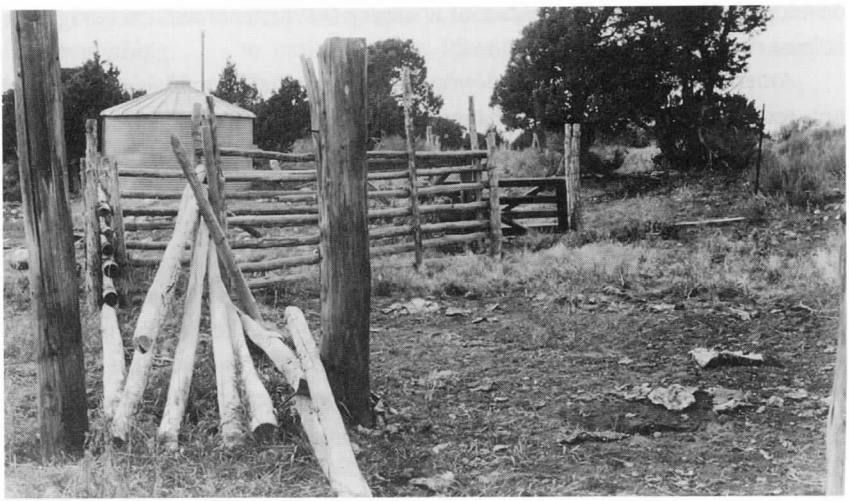
The consequence of defining an Indian according to his "blood" was that the part of an Indian not descended from native forebears was somehow considered inferior. Thus the "breeds," as those of mixed ancestry were sometimes called, were somehow considered better "acculturated," and the part of them that was Indian was considered less than "free." This view was against all logic, as any serious person who considered the matter would realize. The origin of one's ancestors really said nothing about either condition.[25]

Racism resulted from such thinking. Subgroups were created on the basis of race. Factionalism was exploited, as it had been in the Uintah Valley, to gain approval of policies that eventually harmed them all.

Persons in prominent positions, including entertainers and politicians who were of Indian extraction or even of pure Indian ancestry, claimed that they were Indians even though they had never been near an Indian reservation and had no contact with Indian culture. If they were willing to work for the good of the Indians and were truly sensitive to the positive values in the Indian way of life—a common sharing of the bounties of nature, an interest in people rather than things, a strong sense of community, dignity in harsh surroundings, a sympathetic, nonexploitive love for nature, and taking the measure of a person not by what he or she has or looks like or says but by what he or she is[26]—then their claims of affiliation were valid. But if they came from places where the Indian culture had been broken generations ago, their way of life was no longer Indian. It was sad that so many tribes had lost their land and elements of their culture, but by now whether they were "Indians" in a realistic sense varied from individual to individual and could not be determined by "blood."

Euro-Americans had no business defining whose "blood" was worthier. Who was an Indian should be determined by the Indians themselves, according to their own customs, not by outsiders. If Indian status was determined other than by the Indians themselves, some of the notable figures in Indian history would fail to be recognized. Sequoyah's genius produced the Cherokee alphabet. The Seneca chief Cornplanter negotiated peace with George Washington. Yet Sequoyah and Cornplanter were both "half-breeds."[27] If the BIA had been

Preston Allen ranch in 1980 (four views). Photographs by the author.



permitted to define who was an Indian in those cases, Sequoyah and Cornplanter might never have qualified. Genes do not make an Indian.

Meanwhile, the suicide rate among Utah Indians had skyrocketed to twenty times the national average. The Utah State Board of Indian Affairs recognized that "most of the suicides are committed by men under 30" and that the major cause was the inability of young people to "adjust to the 'schizophrenic' existence caused by living in two cultures."[28] The director of the state agency on Indian affairs was John S. Boyden, but he was unable or unwilling to recognize that the schizophrenia cited was the product of the termination policy he had cooperated in, authored, and spearheaded.

The American public was oblivious to, or had closed its eyes to, its own accountability for the harm inflicted on the Indian way of life. It was popular for Americans to express concern, even outrage, over how Indians were treated, but few recognized that the most tragic moves against the Indian way of life were in progress during the decade 1953–63; few would acknowledge that they, through their elected representatives, were responsible for those outrages. The moves against the Uintahs' culture and property did not spring up, fully developed. They were the product of a society that fostered and encouraged or at least condoned them.

Americans engaged in hand-wringing over Indians could not, or would not, recognize that legislating changes in the Indian economy, while ignoring the differences in the Indian way of life, was a prescription for disaster. It was only two decades and one change of administration between the end of the allotment system and its revival under the termination program. And it may not be longer before those mistakes, if they go unrecognized, are repeated again.[29]

Why not just leave the Uintahs alone? Perhaps the report of the University of Utah Extension Division was right in concluding that Preston was not a good rancher and that other Uintahs were not good farmers,[30] but with the obstacles termination created for them, who could expect better? Moreover, before termination they had at least been able to make a modest living. That had been more dignified than the menial employment they were now forced to accept and surely more dignified than the despair forced on so many. It was that despair that appeared to have claimed Liz Bumgarner.[31]

Experience in the division of assets had proven that the full-bloods were also losers. The full-bloods had needed the experience of the mixed-bloods in the management of their common resources as badly as the mixed-bloods had needed their Indian status. The abilities those of a common culture had to contribute to their common aspirations were unrelated to their degree of Indian ancestry.

It was really that simple. If Colonel Custer had been able to divide the Sioux at Little Bighorn, as Boyden and the BIA had divided the Utes, that chapter of Indian history might have been different. It seems characteristic of Euro-Americans that they are unable to learn from history, but the Uintahs are paying for it.

A ray of sun, reflecting from a droplet on his turquoise bolero clasp, recalled Preston to the present. Was it a tear or morning dew? Preston, not sure, walked back to his truck.

Tabby Mountain loomed off on the horizon, spotlighted by the morning sun. After all that had happened, perhaps they should rename the peak Mount Watkins. Perhaps Termination Valley would be appropriate. And why not rename the Uintah River the River of Emancipation?

Old Tabby was ill served in his day, too, but it was never like this. Old Tabby's people had been banished from their traditional hunting grounds to this valley, to be sure, but they had been promised a place where they could live according to the Indian way. Arthur Watkins and John Boyden's assault on the Indian way of life was more thorough. As Colin Murdock aptly observed, they did "everything . . . to extinguish the identity of the Mixed-Blood except draining out his blood."[32]

# EPILOGUE

*There is a constant effort going on to transfer Indian property to whites and one of the most successful ways in the past has been to disrupt the Indian social system. Between 1887 and 1933, through land allotments, we transferred 90,000,000 acres of the best Indian land to whites. This was largely done by the method of persuading or compelling the individualization of tribal properties. . . . Are we indifferent to the way our Indians are treated? If not we had better let our representatives in Congress know that we do not like the present trend of legislation.*

*Eleanor Roosevelt, October 5, 1949*

After Anita Reyos, Dot Hendricks, and Marguerite Murray finished explaining their problem to me in the summer of 1964, the epic quest to salvage something of their rights, which dominated the largest part of my legal career, began.

## THE REYOS CASE

Increasingly more Indians came to my office in Salt Lake City or contacted me by telephone or letter. Not all of them complained about a flat crankshaft or even about a car, but all of their complaints involved sales of stock in the Ute Distribution Corporation. The investigation thus forced me to look at the stock certificates they had sold. I read over and over the bright, red legend reciting that "transfer of this certificate at any time prior to August 27, 1964 . . . shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and

proper offer has been made to members of said tribe." I also read, over and over, the words, "This certificate does not represent stock in an ordinary business corporation"; it represents "an interest under the provisions of Public Law 671," the value of which "cannot be determined" and "should neither be sold nor encumbered."

I found that Public Law 83-671, as it was properly described, was an obscure act adopted by the 83d Congress on August 27, 1954, having to do with a few hundred "mixed-blood" Indians of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah. It provided for the "termination of federal supervision over the trust, and restricted property" of the Indians subject to it. It also provided that "no sale of any interest . . . shall be authorized" prior to August 27, 1964, without such a prior offer to "members of the tribe."

Just what did those provisions mean? Had they figured, somehow, in the plight of Anita, Dot, and Marguerite Murray?

Fortunately, or so it seemed, there was a more experienced lawyer near at hand who could be called on for advice. John S. Boyden, Sr., who had a big reputation as the most experienced, knowledgeable, and influential lawyer in Indian affairs, possibly in the entire United States, had relocated his office to the suite just across the hall from my own new office. Mr. Boyden was then serving as the chairman of the Utah Commission on Indian Affairs. Moreover, Boyden had twice been the Democratic candidate for Utah governor. Having just resigned a position in Robert F. Kennedy's Justice Department, I was well acquainted with Boyden.[1]

The natural thing, therefore, was to step across the hall and ask my good friend, John Boyden, about this Public Law 671 and its restriction of sales to "members of the tribe." To my surprise, Boyden informed me that he himself had drafted the law and had testified to Congress in support of its enactment.

"There was strong pressure in Congress for termination of the Indians," Boyden explained, "and Senator Watkins was Chairman of the Subcommittee on Indian Affairs and pushed this program along as fast as he could. The mixed-blood group were anxious to get their share of the reservation, many of them not even living on the reservation and not receiving benefits. They came up with their own program to terminate the mixed-bloods and not terminate the others, and Senator Watkins agreed to the compromise."[2]

When I told Boyden that I was investigating the sale of Dot Hendricks's stock, Boyden remained helpful, to all outward appearances, but was sharply critical of Dot. "She has squandered all of her own property," Boyden accused. "And now she is wasting that of her children."

"But the law says they 'may dispose of [their] interest . . . to the members of the tribe,'" I explained, "and she may have been forced to sell to care for the needs of her family."

It was then clear that Boyden's condemnation of Dot extended to all the mixed-bloods. "Member of the tribe" was meant to protect the rights of the Ute Indian Tribe, according to Boyden, and did not apply to Dot or any of the Indians who were being terminated.

"We had anticipated in the beginning that if one mixed-blood wanted to buy from another that it ought to be pretty easy to do so, by what they called a 'private treaty,'" Boyden said. But because of "subterfuge" by certain persons, that was not possible.

"If it was going outside of the mixed-blood group, why, then the tribe wanted first chance. So regulations were adopted that prohibited the so-called private treaty. The Secretary [of Interior] knew what was going on, and we were opposed to having those sales confirmed. And I think that's the reason for the change in heart."[3]

Boyden's explanation seemed to defy logic. The law plainly said that "members of the tribe" would have the right to buy and sell among themselves. It did not say "tribe." Moreover, despite Boyden's explanation, my obligation was to do what I could for Dot, Anita, Marguerite, and the other mixed-bloods. What did it matter if they had acted improvidently or wasted their assets?[4] They may have had no choice. If the Indian laws were no longer available to protect the mixed-bloods, and they were to be subject to the same laws that apply to non-Indians, which is what Public Law 671 said and Boyden confirmed, then they should also have the same protections that are available to non-Indians.

Having worked on cases with the Justice Department under laws protecting the purchasers and sellers of stock, I understood that it was unlawful to "engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person," when the person is a sophisticated investor. Certainly Anita, Dot, and Marguerite should have the same rights if they were cheated in the sale of stock in an Indian corporation or denied their rights as a "member of the tribe." These "flat crankshaft" transactions, it seemed, affected the price of the Indian stock much as matched purchases and sales by stock manipulators affected stock quotations published in the *Wall Street Journal*. If Dot was foolish or even greedy, so were some of the victims of stock manipulators; and if the used car dealers preyed on her weaknesses, it may have magnified their fraud.

So, I filed a complaint alleging that the mixed-bloods were victims of a securities fraud when they sold their Ute Distribution Corporation stock because they were denied protections as members of the tribe.[5]

During the summer of 1967, while I prepared the claims for trial, I remained a political ally and friend of Boyden. Our disagreement over whether the protections available to members of the tribe applied to the mixed-bloods or only to the Ute Indian Tribe was merely a professional disagreement common among lawyers. As the younger lawyer, looking for guidance from a more experienced senior, I furnished my venerable friend across the hall with copies of critical pleadings and kept him informed of the progress of the litigation.

Boyden apparently went to school on the legal theories I was developing for Anita, Dot, and Marguerite Murray that sales of their stock should be declared void because the requirement of an offer to "members of the tribe" had not been satisfied. Boyden soon asserted a similar claim on behalf of the tribe. On September 20, 1967, he filed a suit alleging that sale of a valuable tract of land that had been purchased by Liz Bumgarner as part of the mixed-bloods' share of the reservation should be declared void and the tribe given a chance to bid on it because of failure of the condition.

The property was then valuable because it was included within a federal reservoir project. Boyden's plan was to claim that the tribe, as representative of the full-blood members of the tribe, had not been afforded a right to purchase. To accomplish his plan it was necessary to bring Liz Bumgarner, then deceased, to court. Liz's daughter, Oranna Moosman, was among the hundreds of mixed-bloods I was representing, and she was administrator of the Liz Bumgarner estate. Boyden therefore asked me to appear in his proposed lawsuit on behalf of the estate, and I did.

The friendship came to an abrupt and undignified end, however, on the day Boyden took the sworn testimony of the purchaser who bought the property from Liz Bumgarner.

"Yes," I agreed with Boyden, as we conferred in Boyden's private office following the deposition, "the testimony establishes that the requirement of an offer to the 'members of the tribe' was not complied with, and yes, the result is that the sale is void. It does not follow that the tribe has a right to purchase the property, for if the sale is void, the property belongs to the estate."

Boyden's countenance changed. He could see that there was logic in what I had said. If such a legal theory were presented to U.S. District Judge A. Sherman Christensen, who was assigned to hear the tribe's claim and who was also the judge on the claim for Anita, Dot, Marguerite et al., Boyden's plan to

reacquire the property for the tribe might come to naught and the Bumgarner children would be the beneficiaries.

Within a matter of hours a tearful Oranna Moosman was on the telephone discharging me as her lawyer. She said that she would find new counsel for the trial, which was only a few weeks away. When pressed to explain why, Oranna blurted out, "I don't know. Uncle Rex told me to do it!"

A subpoena was issued for Rex Curry. He was put under oath before a court reporter. Curry testified that he had instructed Oranna to discharge her lawyer, at a critical time shortly before trial, at Boyden's direction. Oranna's case went to trial with a new lawyer, and she lost. The tribe won and was awarded the property that had belonged to her mother, Elizabeth Bumgarner.

The trial of the claims of Anita, Dot, and Marguerite began in a small private room adjoining Judge Christensen's formal courtroom in October 1967. Judge Willis W. Ritter had recused himself, in part because he felt his prior involvement in the Margaret Sprouse case might create an appearance of bias. Judge Christensen had loaned his larger courtroom to a visiting judge. This small Indian problem could be handled in the conference room, he assumed. The air was close and the ventilation poor as the unexpectedly large number of persons, mostly Indians, crowded in. Marguerite was sworn to testify.

"I don't believe she can hear me, your Honor," Assistant U.S. Attorney H. Ralph Klemm said, confused by the barely intelligible testimony of the Uintah Ute woman who had complained to him two years earlier about her flat crankshaft. "I believe that's the problem." Klemm was nagged by the knowledge that it was he who had precipitated the suit he was now obliged to defend, with his clever little joke on his predecessor and friend two years earlier, and he must now try to establish that Marguerite Murray's eighth-grade education in a BIA boarding school equipped her to comprehend a stock transaction.

"Does she have some near relative here that could perhaps make her understand?" the judge inquired.

Marguerite Murray's daughter came forward.

"I wonder if you'd come up and stay by her," the judge requested. Klemm continued, "Ask her if she knows what it means to tell the truth."

"That's the only thing I try to tell is the truth," Marguerite volunteered, before the question could be repeated by her daughter. "Of course, I may make mistakes at times, but I always try to tell the truth to the nearest of my estimation."

"And you understand that you are under oath to tell the truth?" Klemm stressed. "What we're trying to do is find out what you know about this, and I

want you to tell me and answer the questions to the best of your ability. Will you do that? Will you try to answer questions the best you can?"

"Yes, sir, I understand very definitely. I never try to make mistakes."

"Ask her if she knows where she got the stock that she sold," Klemm requested of the daughter.

"Well, I'm quite sure that they were awarded to me by the United States Government," Marguerite responded, again before the daughter repeated the question.

"Ask her if she knows why they were given to her."

"They want to know if you know why they were given to you," the daughter repeated.

"Well, let's see, I imagine they were given to me as—to benefit by. That would be my share of the interest which I had in the reservation. Or something that was rightfully mine, something that I could benefit by in later years. That's why they were given me."

"Ask her if the receipt of her stock had anything to do with her being terminated."

"Did a receipt on your stock have anything to do with your termination?" the daughter asked, either misunderstanding the question or not comprehending the differing contexts of the word *receipt*.

"As far as I know, they didn't. I don't think that I have been terminated, although the restrictions on my property were terminated." Marguerite paused, then amended her response. "But individually, I don't know that I have ever been terminated, but I know that the restrictions on my property were terminated. But individually I never have been terminated, I don't think."

Judge and lawyers knew that Marguerite Murray had, indeed, made a mistake. She had been terminated. The trial was to determine what her rights under the Termination Act were.

Judge Christensen quickly recognized what Marguerite Murray did not understand. The Termination Act declared that she and the other 490 mixed-blood Utes, virtually all of whom were Uintahs, were not in need of assistance in managing their affairs. Despite the declaration by Congress that it was appropriate to end protections for her property and despite Superintendent Crow's failure to place her under a formal trust, Marguerite Murray could not manage her rights in a corporation, for she simply had no comprehension of rights so intangible or even of the fact that the law had declared that she was no longer entitled to services as an Indian.

"I think it's demonstrating she needs more help," Judge Christensen observed.

"I don't have any more questions," Klemm replied. "I'm not doing myself any good."[6]

And so commenced the first efforts since the Margaret Sprouse case by any mixed-blood Uintah to assert her individual rights. It was their first group effort since Jim Atwine's and Preston Allen's attempt to secure the counsel of Vernal lawyers Clayton Simmons and John Beaslin; or since Liz Bumgarner and Lula Murdock had abandoned their attempts to employ attorney Ben Davis from Idaho. Now, in October 1967, more than eighty-five mixed-blood Utes had contacted me, all telling much the same story and confirming that Anita, Dot, and Marguerite were not the only ones victimized by a flat crankshaft or some other defect in an old junker.

Adjudicating the rights of so many Indians in an ordinary trial, in which two parties to a dispute confront one another, would be impossible, so Judge Christensen applied some wisdom from rural America to the task. In a flock of sheep or herd of cows the lead male animal wears a bell around its neck or withers. Because the entire group will stay close, the herdsman can listen for the "bell cow" or "bellwether" and find the whole group and they will not be lost in a storm. He directed the attorneys to follow a "bellwether procedure," each side picking a few cases representing facts they wanted the court to consider. The judge might then identify the common elements that emerged from their stories and resulted in such a large number of Indians falling victim to common practices.

The herd analogy proved apt when G. Richard (Nick) Murray, who operated a gas station in Roosevelt on the reservation, testified. Nick produced a long list of names—including Anita Reyos, Dot Hendricks, Marguerite Murray Hendricks, Melvin Reed, Letha Wopsock, and Liz Bumgarner—whose stock he had purchased for non-Indians living in Arizona, Illinois, Louisiana, and other states. Into the record went a letter from one of his confederates, Elmo Matthews, in Arizona:

*Dear Nick:*

*In the letter John Gale sent to some of our prospects, he indicated that in two or three months they would probably pick this stuff up at around $600 a share. . . . So I think we should have an agreement as to how much I can expect on stock sold at various prices. . . . As long as it moves here for at least $650 per share, I'll go along with $530; but if you let it go there for around $600 to my clients, then you'd have to come up on the other end to at least guarantee me around $125 to $150 per share.*

*So long,*
*Elmo*

Nick testified that most mixed-bloods were given a used car either as full or partial payment. In each case Nick presented an affidavit to the superintendent, bearing a signature by the Indian and stipulating that the purchase was for cash, usually for $350 per share. Each affidavit was a blank form when the Indian signed it, however, at least as to the name of the purchaser and pertinent details. That information was not known at the time of the sale, for the stock had to be advertised for sale to members of the tribe for three months before Elmo Matthews could find a purchaser and it could be transferred. The details were later added to the affidavit, by persons whose identity was never revealed, and it was notarized, usually by an officer of First Security Bank (in most cases by John B. Gale), after the advertising was completed.

Nick agreed, as any stockbroker might, when Klemm suggested that he believed he was providing a service to the mixed-bloods. "As a matter of fact," Klemm observed, "people were coming to your door almost every day to sell stock, weren't they? People would come to your door, and they'd say: 'I want to buy a car,' and you'd say, 'How much money have you got?' and they'd say, 'I don't have any money, but I have stock.' Isn't that what happened?"

"To that effect," Nick agreed. "Yes sir."

"And they in effect were pushing this stock off on you, weren't they?" Klemm questioned further. "In fact, you had to turn many of them away, didn't you?"

"Yes, sir," Nick obediently agreed.[7]

The pattern was the same, or nearly the same, in every case. Nick and Gale, the agent of First Security Bank in the Uintah Valley, were partners. First Security Bank maintained accounts for Elmo and other purchasers, and Nick arranged for the purchases at his used car lot and filling station.

It was just like any other securities exchange: Elmo and Nick were the account executives, or "customer men," First Security Bank the "underwriter," or "market maker," and Gale the floor manager at the exchange. Their commission was the spread between $350 and $650, split three ways. The transactions were accomplished in a gas station rather than the swank offices of a Wall Street broker, but every other aspect was the same.

Leonard Burson, one of the bellwether Indians selected for Judge Christensen by the lawyers, was called to testify. Klemm showed Burson an offer to sell his shares for $5,000, filed with Superintendent Zollar in September 1963, with his signature on the form. "It was signed right there in that bank, First Security, before Mr. Gale," Burson agreed. But when Klemm showed Burson an affidavit that Burson had been paid $5,000 filed with the superintendent three months

later, in November 1963, which also appeared to have his signature on it, Burson denied it.

"That's not my signature," Burson blurted out on the witness stand. "I never did see an affidavit like this."

"There is mine," he said, pointing to a noticeably different signature on the offer to sell.

"Did you subsequently take this document to the Bureau of Indian Affairs?" Klemm asked.

"Never did," Burson replied.[8]

In fact, Burson did not get $5,000 for his stock. He was given a used Ford.

On cross-examination, the bank's attorney, Marvin G. Bertoch, tried to establish that Burson was drunk and that his signature on the affidavit merely looked different because it was shaky. Burson was adamant that his signature on the affidavit was forged but that his signature on the offer to sell was genuine. What was clear was that the transfer document had been held for three months and then Gale had either notarized a forged affidavit or notarized the signature of a drunk. Judge Christensen was unimpressed by either possibility.

The records of the Uintah and Ouray Agency at Fort Duchesne were placed in evidence. They showed that when the affidavit supposedly signed by Burson and other mixed-bloods arrived at the office of the Bureau of Indian Affairs in Fort Duchesne in the envelope of a used car dealer, Superintendent Zollar was not misled about the documents having been altered or even forged. On the contrary, Adalyn H. Logan, the realty officer at the Uintah and Ouray Agency who processed documents concerning the sale of stock, testified that she could not help but notice that there were numerous "irregularities" in the way sales were being negotiated. She testified that they were not submitted by the Indian at all, because they arrived in envelopes with the return address of car dealers. There was evidence of tampering, including outright forgery. Names of purchasers were erased and the names of car dealers inserted, dollar amounts were altered, and the documents were postdated to give the appearance that the sale was after the three-month advertising period.[9] In some cases the purchaser signed guaranteeing the transaction of the seller. Mrs. Logan dutifully placed little red checkmarks and exclamation marks by the irregularities to attest that they had been noted and then brought them to Superintendent Zollar's attention, for the BIA remained guardian of each mixed-blood until August 27, 1961, and sale of their property was restricted until August 27, 1964, at least in the sense that the superintendent had to certify that any sale of their property before that date was conducted properly.

Superintendent Zollar had also received a letter from Rex Curry, the business manager of the tribe, just the day before Burson's affidavit arrived, warning him that false affidavits were being submitted. "Some of the people have agreed to take automobiles as part payment of the stock," Curry wrote. "Acceptance of an automobile would not be fulfilling the requirements of receiving as much as the shares are offered for. . . . The seller should receive only cash instead of equipment and chattels. . . . I am sure that some of the sellers may be taken advantage of by automobile salesmen."[10]

Logan wrote in the margin of Curry's letter: "Note for files. This memo was discussed with Mr. Z. [i.e., Zollar] but he did not think the points raised should be a further concern of ours, since the members have been terminated. The stock is unrestricted, and they are, therefore, free to do whatever they wish, as long as the Bureau complies with CFR-243 [*Code of Federal Regulations*, vol. 25, pt. 243], which we will do until August 27, 1964."

Nor was this all. The officers of the Ute Distribution Corporation recognized the dangers. They met with Superintendent Zollar and explained that mixed-bloods were being given used automobiles rather than cash, warned both the bank and the superintendent that a car was not the same as the cash price for which the stock was advertised, and insisted that it was the responsibility of the superintendent to require that the advertised price be paid.

"In our involvement with offering 970 shares for 129 members and the furnishing of certificates to the First Security Bank of Utah for the 808 shares sold to non-members prior to August 27, 1964, we could not help but note several irregularities and indication that advantage was being taken of some of the sellers," Logan reported in a memorandum to Zollar. Zollar instructed her to do nothing. His rationale? "Since the seller furnished us with an affidavit or certified statement to the effect he had received from the named non-Indian buyer the price he had asked, . . . it [is not] our responsibility to pursue the matter further."[11]

It then became clear that Ralph D. Cowan, chief trust officer of First Security Bank, who had agreed with Preston Allen that the bank would "protect" the Indians, was at least aware of the "irregularities," and may have fostered them. Certainly there could be no doubt that his agent, b'Gale, did.

On the witness stand Cowan was shown the letter he had written to Ab Harris assuring him that "it would be our duty to see that these transfers were properly made" and further assuring the AUCU that "we have people especially trained for this type of work."[12] Cowan acknowledged that he wrote the letter but testified that he actually took his directions from John Boyden, "the attorney for Ute Distribution Corporation at the time." Cowan explained, "We

released no certificates except those that had been sold [because] . . . I received a letter from John Boyden instructing that we should hold the stock of each mixed-blood because of 'certain unfortunate experiences which they have had in the past.'"[13]

When the first mixed-blood attempted to sell her stock, in September 1963, Cowan refused to give her the stock certificate. That first person just happened to be Liz Bumgarner, the sister of Rex Curry and an officer of the AUCU whose instructions Cowan testified he was bound to follow.

Cowan was handed a letter from a mixed-blood dated March 7, 1964, demanding that Cowan give him the stock certificate.[14] He was asked, "In fact, some of the stockholders asked you for their stock and you refused to give it to them?"

"That is correct," Cowan affirmed.

Cowan was then handed the bank's contract to act as stock transfer agent. "Mr. Cowan," I asked, "is there anything in the stock transfer agreement which authorizes you to [with]hold stock certificates [of] individual stockholders?"

"Not specifically, no," replied Cowan. "But I believe that we are to follow the instructions from the counsel for the corporation."[15] Cowan either ignored or was unaware that George Morris was counsel for the corporation, not Boyden.

Cowan was then asked to explain how he could comply with Boyden's request not to give the mixed-bloods possession of their stock without violating his agreement to see that transfers were properly made. Transfer of Liz's stock could not be permitted, at least not pursuant to the conditions printed on the certificate, until the superintendent certified, *on the stock certificate*, that the transfer was proper and that the law had been complied with. Liz could not get the superintendent's endorsement, at least not on the certificate, if Cowan would not give her possession of the certificate.

"And you found that a little bit awkward because of the fact you were holding the stock certificates in your vault, didn't you?" I asked.

"We had to work out a procedure, yes, that would still take care of it," Cowan agreed.

"You instructed Superintendent Zollar," I questioned further, exhibiting a letter from Cowan dated September 23, 1963, "that the bank will accept a separate certificate and a separate stock power in lieu of the endorsement of the stock certificate itself and the stamping of the superintendent's certificate relative to advertising on the stock instrument itself?"

"I think that's true, yes," Cowan said.[16]

Thus neither Liz nor any other Indian ever saw their stock certificate, because Boyden instructed Cowan not to let them do so. According to Boyden, "unfortunate experiences" would follow if they had access to their stock.

One of the "unfortunate experiences" for Liz was that she did not see the clear warning on her stock certificate, in bold red letters, that it should not be sold because its value could not be determined and because it represented the Indian's heritage. The provision requiring endorsement on the certificate itself was required by the law and the regulations and articles of incorporation and was one of the conditions of transfer that Cowan and the bank had contracted to enforce.

"Was there any reason why you authorized a deviation from those procedures?" I asked Cowan.

"Yes," Cowan explained. "We were endeavoring to protect those who were the owners of the certificate."

The judge's expression was one of confusion.

"You were endeavoring to protect the owners of the certificate?" I asked. "Now, Mr. Cowan, you were aware of that warning printed in red letters on each stock certificate? And you understood that that warning was there for the protection of the individual stockholder, didn't you?"

"That's one of the protections, yes," Cowan agreed.

"Didn't it ever occur to you that the requirement of the endorsement of the certificate itself might be for the purpose of insuring that the warning be actually communicated to the Indian?"

"Well, that's—" and there was a long pause as Cowan was confronted with the obvious fact that withholding the warnings was difficult to square with his promise to require that transfers be properly made. "I guess it's on there in warning to them, yes," Cowan replied.[17]

The bank's policy, it became clear, was to conceal any irregularities, not to prevent them, to make sure that no questions could be asked, not to protect the Indian. That was obvious when I pointed out to Cowan that "this particular endorsement [of Burson on the stock transfer instrument] is undated."

"That's our practice, not to date endorsements."

"Pardon me," Judge Christensen interjected. "Why would assignments always be required to be undated in your practice?"

"Because if there is a stale date on it," Cowan replied, "it would raise a question about the matter. So it's the custom generally not to date them, in order to avoid stale dates."

"Well, if there was a stale date that would properly hold up the transfer," the judge protested, obviously confused by how such a practice could be

rationalized with the bank's promise to see that the transfers were proper, "why shouldn't the fact be known? In other words, if a stale date would raise a question about the matter, why wouldn't the bank be interested in any legitimate question?"

"Well . . . it's just general practice," Cowan said.[18]

Judge Christensen thus saw the ingredients of fraud laid out before him. The use of such a corporation to manage and distribute the unknown and unknowable mineral assets of the reservation, for posterity, would invite problems if its shareholders were sophisticated and experienced mining or oil and gas speculators but was a prescription for fraud and overreaching when the shareholders were poorly educated and inexperienced Indians, conditioned to sharing their meager resources. The potential for fraud was increased to the realm of certainty by withholding the warnings intended for the benefit of the Indian.

## THE CONFLICT OF INTEREST REVISITED

On April 25, 1968, Judge Christensen entered findings of fact and conclusions of law granting judgment to Melvin Reed, Marguerite Murray Hendricks, Leonard Burson, and the other bellwether plaintiffs. There were immediate rumors that mixed-bloods in the Uintah Valley were being intimidated for questioning termination and its results. On May 9, 1968, in what Boyden described as a "scathing" letter, Adam Duncan, my associate in the trial of the case, charged Boyden and the Bureau of Indian Affairs with threats and intimidation of the mixed-bloods over their efforts to employ lawyers independent from or critical of Boyden.[19] The letter confronted Boyden, with a copy to the BIA, with the failings of the termination policy, which were by then recognized among Indian scholars.

> It represents perhaps the worst in over a century of depredations practiced on the Utes. . . . The Bureau has been unbelievably callous regarding the needs of the "mixed-bloods."
>
> We fully intend, unless and until our clients choose or are frightened into choosing otherwise, to do all we can, as lawyers, to try—albeit belatedly and haltingly—to right a grievous wrong. . . . [I]t would seem appropriate for you to reassure your wards and former wards that you are interested in their gaining anything that is rightfully theirs and that it is their right, as the citizens you purportedly want them to be, to seek redress in courts of law.

As the President said not too long ago, it is time to put our first Americans, first.[20]

On May 28, 1968, Boyden nevertheless opposed the interest of the mixed-bloods in the *Reyos* case. In a brief he filed on behalf of the Ute Indian Tribe, Boyden urged that the judge was mistaken in concluding that the protection of "members of the tribe" applied to the mixed-bloods. "Member of the tribe" refers only to the Ute Indian Tribe, Boyden reasoned in his brief. Boyden pointed to provisions of the act stipulating that after April 1956, the tribe would consist only of its full-blood members.

Judge Christensen disagreed. He felt that the act's requirement that rolls be prepared identifying both the mixed-blood and full-blood "members" and provisions that the secretary of interior continue as trustee of each individual mixed-blood until August 27, 1961, and of their property until August 27, 1964, indicated that "members of the tribe" meant the *individuals* in both Indian groups.

"This position . . . poses the delicate question of whether [Boyden] should properly be appearing in this case in a position so clearly adverse to his former clients," Duncan and I, as lawyers for the mixed-bloods protested. "Not only do a number of sections of the Act impose specific duties on the United States vis-à-vis the 'mixed-bloods,' but the Act also requires the Secretary to promulgate regulations to protect the 'mixed-bloods.'"[21] Moreover, the regulations published by the secretary of interior in the *Code of Federal Regulations*, vol. 25, sec. 243.2(c), defined "member of the tribe" as "all mixed-blood and full-blood members."

"Well," Judge Christensen inquired of Boyden, "is the upshot of the matter that you think that there is further responsibility on the part of the government with regard to the mixed-bloods beyond what I have determined, or less responsibility?"

"I think this would be less, your Honor," Boyden staunchly replied.[22] His own pattern of behavior demonstrated that he not only believed but was committed to "less responsibility."

Judge Christensen did not agree and declined to change his ruling.

By the summer of 1968, Boyden was confronted with a new challenge. A letter from Preston Allen dated June 11, 1968, informed Boyden of an AUCU resolution demanding that he not appear in opposition to the interest of his former clients.

This challenge was more serious because Boyden had actually represented Preston Allen personally on numerous legal matters arising out of termination,

including a suit against the Ute Distribution Corporation,[23] and was then actively representing Preston in a suit concerning the voting rights of Indians.[24] Moreover, Boyden had represented other mixed-bloods concerning their rights under the Termination Act, including a suit by Elmer Hackford over the range corporations and a suit by Callie Hackford over water rights.

"I have been requested to advise you," Preston wrote to the attorney who had masterminded and directed every step of the AUCU during the termination process, "that at the regular meeting of the Board of Directors of Affiliated Ute Citizens on June 10, 1968, the following resolution was unanimously adopted:

> Resolved, that Preston Allen as President of Affiliated Ute Citizens be authorized and directed to address a letter to Mr. John S. Boyden, former attorney for Affiliated Ute Citizens, advising Mr. Boyden that the Board is of the unanimous opinion that it would constitute a manifest breach of the terms of the contract of employment between Affiliated Ute Citizens and Mr. Boyden dated February 13, 1960 if Mr. Boyden were to intervene, either on his own behalf or in his capacity as attorney for the Ute Indian Tribe, in opposition to the position taken by Affiliated Ute Citizens in their lawsuit against the United States now pending before the United States District Court in Salt Lake City, Civil No. 82-68.
>
> Further resolved, that a formal demand be made upon Mr. Boyden that he refrain, at all times in the future, from taking any position in any legal proceeding in conflict with the interests of Affiliated Ute Citizens or any of its members in accordance with the terms of said contract.[25]

The letter had been put in proper legal form with Duncan's help.

Boyden seized on the clause in his contract with the AUCU requiring that any dispute be resolved "amicably." If there was no dispute, then he could ignore Preston's letter. So he promptly wrote to Rex Curry, the business manager for his principal client, the tribe, to inquire if Allen's objections could not be resolved "amicably." Curry assured Boyden that there was no conflict of interest.

Boyden therefore rejected Preston Allen's demands in a letter dated July 2, 1968. The provision against conflicts of interest was only for "the term of the contract," according to Boyden. Since the contract expired on February 12, 1963, and "no such controversy arose during the term of the contract," Boyden did not consider that he had any duty to the AUCU. Moreover, Boyden stated,

"I further reserved the right to take such action as *in my opinion* might be required by the highest ethics of the legal profession and in good conscience, including termination of the contract. I have never assumed any legal cause for you which produced a conflict of interest with the Tribe." Boyden thus ignored the disputes over the division of property and the controversies over the "private treaty" purchases. He ignored as well that he had recently taken the position that "member of the tribe" meant only the tribe. He continued, "You have furnished me with no confidential information that could in any way be used against you by the Ute Indian Tribe. If any conflict of interest did present itself, it would not be necessary for you or anyone else to make a formal demand upon me from taking a position that could not be fully justified in ethics and in good conscience."[26]

When the matter came before Judge Christensen, he invited Boyden, Duncan, and me into his chambers. I listened with what I hope was well-concealed satisfaction as Judge Christensen admonished Boyden over and over, explaining to him in the most forceful terms that he could not properly oppose the interests of his former client, that the position he had taken in his letter to Preston Allen was untenable, and that it was no answer to say that his contract to represent the Affiliated Utes had expired, for confidences reposed during the term of the agreement extend far beyond its duration and make conduct such as Boyden was proposing unfair.

Boyden should have been abashed. Instead he pointed to the concluding paragraph of his letter to Preston: "Your attack upon Public Law 671 . . . is contrary to the interests of the Ute Indian Tribe." He repeated that position to Judge Christensen: "I am in no position to desert my client of many years. . . . Simply because [Preston Allen and his] associates . . . during the early days of the division used my services for certain purposes, [that] gives [them] no reason to dictate my activities in following the mandate and duty I have toward my client, the Ute Indian Tribe." Judge Christensen repeatedly quoted to Boyden the provision that "the Attorney will represent neither of said parties upon the matter in controversy." Boyden simply ignored this point and refused, despite the judge's admonition, to adhere to the terms of his contract, claiming the standards of legal ethics did not require him to do so.

Faced with Boyden's adamant refusal, Judge Christensen was placed in the position of having to decide if he would grant the AUCU's request to bar Boyden from appearing in opposition to his former clients. My expectations were at their highest as Duncan and I rejoined Preston in the courtroom. I could not believe my ears when Judge Christensen announced from the bench, "Mr. Boyden will do what is right," and simply dismissed the AUCU's objection.

Thus did Boyden demonstrate, as he had written to Curry on June 28, 1968, "I am sensitive to matters that may imply conflict of interest."[27]

A few days later at a social function of the Utah State Bar Association, I perhaps intemperately commented to its president, Scott M. Matheson, that the bar association would be unwilling to enforce its code of ethics against a lawyer as prominent and influential as John S. Boyden.

"*This* bar association will do something about it," Matheson, future governor of Utah, assured me when he heard of the hearing before Judge Christensen. "You give me that complaint!"

The next day, knowing that professional complaints usually accomplish nothing, and sometimes damage the cause of the client, I regretted having made the comment. Still, Scott Matheson was a man of high integrity, an attorney held in high regard both by me and the public. The proper thing, it seemed, was to give Matheson the information concerning Boyden's duplicity. After all, Matheson had requested it. The facts were, moreover, properly the concern of the bar association.

When Matheson and the Board of Bar Commissioners heard the facts, they adopted a resolution directing that Boyden was not to represent to the court that the bar approved of his conduct. Boyden complied with that direction, or appeared to do so until July 1969 when he asked the Justice Department to amend his contract to represent the tribe. Boyden represented to David R. Warner, chief of the Litigation Section of the Justice Department, that the bar had rejected claims by the mixed-blood Utes that he had disregarded the provisions of the contract stipulating that in the event of a conflict, he "will represent neither."[28] The impression left by this hair-splitting was the exact opposite of the bar's resolution.

The point of Boyden's July 1969 letter to Warner was to amend his contract so he could oppose the interest of his former client, the Affiliated Utes, in the litigation I was conducting.[29] He acknowledged that he had been employed by the Affiliated Ute Citizens of the State of Utah beginning July 13, 1956, and that his agreement with the Affiliated Utes included the provision that in the event of a conflict of interest between the tribe and the mixed-bloods, he should represent neither of the parties. Boyden further acknowledged that the AUCU had tried to employ Ben Davis from Idaho as their attorney but was unable to because they were persuaded at a special general membership meeting on November 3, 1956, "*that he would have to be associated with Mr. Boyden anyway, leaving us [AUCU] with the opinion that Mr. Boyden was the one attorney who knew more about Indian affairs and Indian ligislature [sic] than any other attorney in the State of Utah.*"[30] The events in

progress were demonstration, if demonstration was required, that another attorney would *not* have to be associated with Boyden, but the assertion illustrated how the AUCU had been kept under Boyden's control.

John O. Crow, acting commissioner of Indian affairs, had approved Boyden's contract to represent the AUCU in 1956 despite the obvious conflict, Boyden asserted, because Boyden was "peculiarly qualified by virtue of his detailed knowledge of the problems, his personality, and *his demonstrated integrity* to serve as counsel for both the *Affiliated Ute Citizens and the Ute Tribe*."[31]

"No conflict developed that required me to take a stand for one that would be contrary to the interests of the other," Boyden assured Warner. He casually ignored the controversy over the division of the range and the timber at the meetings on April 23–24 and May 18, 1957, instead asserting, "The division was accomplished in harmony and with understanding. The smoothness with which difficult decisions were made demonstrated the advisability of the method. I was not required to 'vindicate' or pass judgment upon the agreed division of assets by the representation of the two groups."[32]

He also ignored the persistent efforts by Elmer Hackford, Callie Hackford, Preston Allen, and others to secure a share of the range rather than stock in the corporations, culminating in a bitter lawsuit between the tribe and Margaret Sprouse. "The proceedings were fairly conducted," Boyden asserted, "and, to the best of my judgment, the assets received by the Affiliated Utes and the tribe were in accordance with their respective interest."[33]

Ignoring the fact that Area Director Haverland flatly ordered, "Rock Creek is what you will get," or that the timber value had been estimated by a crude method whereby Boyden passed out slips of paper on which BIA officials wrote their estimates, he claimed to Warner, "The representatives responsible for the division were fully advised as to their rights and exercised their independent judgment without undue influence or misrepresentation. . . . They were capable people and certainly could not be easily imposed upon by others in relation to the value of the reservation with which they were intimately familiar."[34]

Neither Judge Christensen nor Scott Matheson nor David Warner were aware in 1967–69 of the extent to which Boyden had played a conflicting role, not just in relation to the estate of Liz Bumgarner or in the litigation of the mixed-blood Uintahs, but in the entire termination process. Boyden did not tell them, as he was obligated to do when asking for approval to appear in opposition to the mixed-bloods' interest. Had he done so, the permission to amend his contract might never have been given.

Many years would pass before I learned the depth and extent of the conflict of interest the mixed-blood Utes had been subjected to.[35] By then there was

little chance to do anything about it. Even when confronted with the issue in 1977, when Preston Allen and the Affiliated Utes brought suit over the range corporations, Boyden was evasive and contradictory. He did remember, however, that there was a controversy over who was a "member of the tribe." He said, "Some of these people were buying it, saying, 'I am a member of the Tribe, and, therefore, I am entitled to buy it and do as I please with it.' That was Workman's statement right in his letter to me."[36] He also remembered that "there were two visits" that he and Rex Curry had made to the trust department of First Security Bank. "I went up and talked with Mr. Cowan and told him that the Tribe was interested in buying," admitted Boyden, but he could not remember if he participated in the sale.[37]

Thus did John Boyden honor his agreement that he "will represent neither of said parties upon the matter in controversy." As a point of fact, he worked behind the scenes with the U.S. attorney to defeat the Margaret Sprouse suit, even to the extent of composing the letter for Assistant Secretary Abbott to send to Superintendent Zollar directing him to deny Margaret Sprouse's offer and permit sale to his client, the tribe, and proposing that the BIA amend his contract with the tribe to permit him to engage in litigation against Mrs. Sprouse.[38] Until the Freedom of Information Act of 1967 shook these documents out of the dusty files of the BIA, the Uintahs were unaware of the conspiracy that had destroyed their rights. And so was I, for I had insufficient information to even suspect the worst.

## THE AFFILIATED UTES' CASE BEFORE THE SUPREME COURT

In 1970, President Richard M. Nixon called for a "new" concurrent resolution on Indian policy by Congress that would renounce, repudiate, and repeal the termination policy as expressed in House Concurrent Resolution 108 (1953).[39] With the "new" Indian policy, the termination of the Ute tribe came to an official halt. However, the "mixed-bloods" had already been terminated and their portion of the proceeds from oil and gas and mineral leasing derived from the assets held in federal trust continued to flow through the Ute Distribution Corporation to non-Indians in Utah and elsewhere.

On April 21, 1971, still a young lawyer, I opened the official-looking envelope from the U.S. Supreme Court. A satisfied smile lit up my face, followed by a heavy sigh of relief, as I read the words "writ granted."

Judge Christensen decided the *Reyos* case on April 19, 1968. He ruled that First Security Bank and b'Gale had defrauded Anita, Dot, Marguerite, and hundreds of other mixed-bloods who, by that date, had come forward with

stories of flat crankshafts or similar problems. Judge Christensen further ruled that the conduct of Superintendent Zollar breached the duty of the United States to protect its Indian wards.

The judge accepted the testimony of well-qualified geologists and oil companies that the oil reserves of the reservation had a value of $414 million.[40] In addition, the stock represented an interest in approximately $8 million in claims against the United States, already adjudicated, over the wrongs committed at the time of the Treaty of Spanish Fork. Those values represented, speculatively, $28,000 per share of stock. However, the judge ruled that the measure of damage was market value, which must be assumed from what a reasonable purchaser would have paid had she or he known the facts, not speculation, even if well founded, and he awarded a mere $1,500, from which the value received at the time of sale must be deducted.

Faced with that decision, Preston Allen and the directors of the AUCU authorized a suit against the United States in an effort to require that the AUCU rather than the Ute Distribution Corporation manage the mineral estate and that individual mixed-bloods be paid the proceeds from mineral leasing. The mineral assets were still held by the United States. If Judge Christensen would not award their full value to the mixed-bloods, Preston Allen and the AUCU Board of Directors reasoned that the assets remaining should at least be returned to the AUCU's control.

The two cases were consolidated on appeal. Thus the *Reyos* case became known as *Affiliated Ute Citizens v. United States*. The court of appeals for the Tenth Circuit in Denver reversed, Judge Oliver Seth reasoning in the opinion he wrote for the court that the bank's conduct amounted to "ordinary banking practices" and that the Indians, not Superintendent Zollar, were at fault for executing false affidavits. A joint petition for certiorari was filed with the U.S. Supreme Court.

By that fateful morning on April 21, 1971, I was at the end of my rope. I had carried the cause of Anita, Dot, Marguerite, and hundreds of others for seven years, through the district court, the Tenth Circuit Court of Appeals, and now to the U.S. Supreme Court. All of the expenses had to be advanced. It was pointless to ask the impoverished mixed-blood Utes to pay even the expenses, much less for my legal services.

Thus I had a special reason for my satisfaction over the simple words "writ granted." Those words staved off the threat of bankruptcy. Moreover, they made it possible to finance the Uintah Utes' cause, for others would be willing to lend financial and other support now that the High Court had given a signal that their complaints had merit.

President Nixon's call for a new concurrent resolution rejecting termination had thrust the issue into national prominence, justifying its attention by the High Court, and Judge Christensen's bellwether procedure had clarified two salient facts that captured the imagination of the Supreme Court, facts the importance of which the Indians themselves had never recognized.

First, the used cars were not purchased for cash but paid for with shares in the Ute Distribution Corporation. Second, and more important, the Ute Distribution Corporation was no ordinary corporation, nor did it have ordinary shareholders, assets, or business. The corporation had been formed to implement the Ute Termination Act, a confusing, contradictory, highly ambiguous piece of legislation whose declared purpose was to end the Indian status of the mixed-blood Utes immediately and eventually that of all of the Utes of the Uintah and Ouray Reservation. Similar termination laws had been adopted for other Indian groups, and it was important for American Indians everywhere to define the rights of terminated Indians.

Any proceeding before the Supreme Court is destined to set national policy on the legal questions involved. There is thus a rush by individuals and associations to enter briefs as amicus curiae, or friend of the court, to advise the justices about how persons experienced in the field believe the questions should be resolved.

The Association on American Indian Affairs, a non-Indian advocacy group interested in the welfare of Indians, headquartered in New York City, entered an appearance in support of the mixed-blood Utes. The Native American Rights Fund, a law firm in Boulder, Colorado, composed of both Indian and non-Indian lawyers, also supported the position of the AUCU. In addition, the Securities and Exchange Commission (SEC) entered an appearance in support of the mixed-blood Utes' claims that the securities laws should be available to protect them.

The only persons or groups asking to appear in opposition to the AUCU were John Boyden, representing the tribe, and George Morris, attorney for the Ute Distribution Corporation.

Permission to appear amicus curiae is usually a matter of course, provided the interested parties consent; but if they refuse, a formal motion and order of the Court must be entered granting permission.

On June 28, 1971, Stephen G. Boyden sent me a letter asking for permission for his father, John Boyden, to oppose the AUCU. I refused and explained to the clerk of the Supreme Court that Boyden had previously acted as counsel for both groups of Indians. The AUCU, it was explained, as it had been explained to Judge Christensen, could not and would not consent to an

appearance in opposition to their interest by one who was their former lawyer,[41] under a contract approved by the United States agreeing that should any conflict arise, he would represent neither. Such an appearance would be unfair.

Boyden nevertheless filed his brief, amici curiae, on behalf of the Ute Indian Tribe, with consent of the court. He claimed, possibly recalling his own rump caucus with Wilkinson and the superintendent when the termination idea was first presented, that the Affiliated Ute Citizens of the State of Utah, an organization that Boyden himself had created, was merely a "rump revival of an association that has divested itself of all title and authority." Preston Allen, for whom Boyden had conducted litigation as president of the AUCU, was "presumptuous" to use that title and had "arrogated" use of "the name, Affiliated Ute Citizens of the State of Utah."[42] George Morris joined in Boyden's brief.

When I arrived in Washington, D.C., on October 13, 1971, I immediately telephoned A. Raymond Randolph, Jr., assistant to the solicitor general of the United States. The solicitor general and his deputies, wearing distinctive swallow-tailed morning coats, are the only lawyers usually allowed to appear on behalf of the United States. The telephone call was a mere courtesy contact with opposing counsel.

Randolph was a bright young lawyer, even younger than I was, and a future U.S. district judge for the District of Columbia. Being an assistant solicitor general was a plum position—not least because it is usually a stepping-stone to higher callings.

To say that Randolph's tone was hostile is an understatement: "Solicitor General Erwin N. Griswold does not like the things you have said about John Boyden," Randolph sternly declared. "The solicitor general knows of the fine reputation of Mr. Boyden."

It was obvious that someone, either Boyden or one of his high-placed friends in the Bureau of Indian Affairs or the Justice Department, had been doing some lobbying with Griswold. It would not have been improper if they had; lawyers routinely confer or negotiate with opposing counsel. Indeed, that was my purpose in telephoning Randolph. The charge that I had acted improperly in pointing out that Boyden had represented the AUCU and had contracted that in the event of a conflict he would represent neither party, which he acknowledged was the case, nevertheless seemed excessive.

It was also true, as Randolph indicated, that Boyden was highly regarded—in the Justice Department, in the Bureau of Indian Affairs, and generally by those who knew him. I had been Boyden's friend myself and held him in high regard—at least until he had acted against his former clients' rights. Still, it seemed that such questions ought to be determined on their merits and

that even those who were highly regarded should be held to the same standard as other lawyers—perhaps higher. Randolph's hostility could be explained only if something had been said by someone which made the usual cordial and professional relations between opposing counsel impossible.

I had no chance to say any of those things to Randolph or to find out what had been said or by whom. "We will not permit you to say things like you have said about Mr. Boyden," Randolph said crisply, as he terminated the first and only conversation the two of us were to have before I could respond.

My next telephone call was to Walter P. North, associate general counsel of the SEC. As the *Reyos* case worked its way through the appellate process, I had been invited to participate as a lecturer at securities law seminars. North was also a participant in those programs, and we had become friends. Now that the *Affiliated Ute* case was before the Supreme Court, our association had become closer and more friendly.

After we had exchanged greetings, North made a curious comment. "I don' t know what to tell you," North said, "the solicitor general has refused to let us file our own brief in the *Affiliated Ute* case but has agreed to include our arguments in the brief of the United States being filed for the Bureau of Indian Affairs."

North seemed concerned that the SEC's position would not be adequately presented or would be confused with the inconsistent positions of the Bureau of Indian Affairs, defense of whose conduct under the Termination Act was Randolph's major task.

An organization as large as the United States of America must speak with one voice, and it is the function of the solicitor general to coordinate, and mediate where necessary, the sometimes conflicting views of various agencies of government. Independent agencies, such as the SEC, frequently present their views, but they must do so under the direction and control of the solicitor general.

"I don't know what to do about it," North continued, "but the solicitor general has directed that we are not to discuss the case with you. We have to do what the solicitor general directs—but Mrs. North and I would like to invite you to our home for dinner."

I eagerly accepted the invitation. The evening was warm and cordial. North discussed securities law issues with me, only in the abstract, of course, well into the early morning hours. If that discussion tracked very closely with the argument that the SEC might have presented to the Court, but the solicitor general had not allowed, well, that is a mere coincidence. Still, when the Supreme Court convened the following Monday the young lawyer was better

Parker Nielson and Walter North lecturing on securities laws. Author's collection.

prepared—much better—to discuss the securities law as it applied to flat crankshaft complaints.

On October 18, 1971, when the *Affiliated Ute* case was argued, the spectators' gallery was brilliant with turquoise and silver jewelry. An official delegation of the AUCU had traveled to Washington, D.C., to attend the proceedings and report to the membership. Getting them into the chamber was a challenge, for attendance at Supreme Court proceedings is an attraction to tourists and seating is limited. Curiosity seekers queue up outside the Court, groups of whom are ushered in for a short time to view the proceedings, after which another group takes their place.

I explained to the clerk of the Court that I had clients in Washington for the proceedings and inquired if it would be possible for them to attend.

"Certainly, Mr. Nielson," the clerk responded helpfully. "We make special arrangements for the litigants. How many passes will you need?"

I apologetically replied that twenty would be needed.

"Twenty!" the clerk exclaimed. "That is an unusually large number, but we will accommodate you."

I then discovered that twenty would not be nearly enough. In addition to the official mixed-blood delegation, a large number of other Indians had traveled to Washington on their own. I had to go to the clerk again and beg for twenty more passes. Visibly irritated, the clerk complied.

When I entered the courtroom, I learned the rest of the story. Both the Ute Indian Tribe and the Ute Distribution Corporation had sent delegations of their own, and they already occupied more than twenty seats in the gallery. There would be few tourists other than Indians attending arguments before the U.S. Supreme Court on that day.

I took my place at one of the long tables assigned to counsel, one on either side of the speaker's rostrum in a central position before the justices' bench. I was all alone.[43] Directly before me was the long, semicircular judicial bench from which the robed justices peered down. To the left sat Randolph, in his swallow-tailed coat, representing the solicitor general. Also seated with Randolph were Boyden, lawyers representing First Security Bank, and separate staffs from the Bureau of Indian Affairs and the Interior Department. They occupied all of the chairs available, and more of them were seated nearby. Any observer would have thought me badly outnumbered.

When the proceedings commenced, I reasoned with the Court that if the mixed-bloods were told that they were no longer Indians but were to be like any other citizen in the mainstream of American society, it was only fair that the United States, First Security Bank, Boyden, and John B. Gale all be held to

the same standard. Disregard of the protections in the Indian law for "members of the tribe" should be treated like any other "material fact," or any other "act, practice or course of business" for the purpose of securities laws. The securities laws, in other words, should take color and meaning from other agreements, statutes, and surrounding circumstances, I reasoned. When Marguerite Murray sold her stock to Nick Murray for $350, she was defrauded by his failure to tell her that he had a purchaser in Arizona for $650. Failure of the car dealers to disclose the true price of the stock or that it was being sold in the non-Indian market at a higher price was a "failure to disclose a material fact," just as the subscribers to the "investment letter" of Capital Gains Research Service, defendant in a prominent securities law case of the period, were defrauded when the investment adviser failed to tell them that he had a financial interest in the security he was recommending that they purchase.[44]

The Court held the bank and its officers liable. John B. Gale's activities in "develop[ing]" a market "disclose[d], within the very language of one or the other of those subparagraphs [of Rule 10b-5],[45] a 'course of business' or a 'device, scheme or artifice' that operated as a fraud on the Indian sellers," Mr. Justice Harry Blackmun wrote. The United States was not liable, even though Mr. Justice William O. Douglas wrote a separate concurring opinion, dissenting in part and reasoning that only by imposing liability on the United States could the values of the reservation be restored to the mixed-bloods.

## THE MIXED-BLOODS' FINAL REJECTION

The *Affiliated Utes* case ought to have been a triumph for the mixed-blood Uintahs. Instead, it marked both the beginning and the end of any effort by the courts to remedy wrongs of termination inflicted on the Utes. Thereafter, the doors to the courthouse were closed, and the Utes denied any recourse.

### The Court of Claims

With their grievances already adjudicated by the U.S. Supreme Court, the mixed-blood Uintahs asked the United States Court of Claims to implement their rights. There it was demonstrated that they had been finally "liberated" and "freed," just as Arthur Watkins and John Boyden intended.

The trial of the *Reyos* case before Judge Christensen established that the mixed-bloods had been stripped of their Indian status and the rights and services available to Indians. The United States acknowledged that the rights thus denied included their interest in the wildlife, water rights, timber, and other

resources of the reservation. That fact was made clear when the United States filed a formal document with Judge Christensen stating that the provision of Public Law 671 that they "shall not be entitled to any of the services performed for Indians because of [their] status as an Indian" and "the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction," eliminated all of those rights.

In the culture and religion of the Indian, hunting and fishing rights were important far beyond their commercial value. Water rights were of incalculable value, given the aridity of the West and the by then well-established doctrine[46] that the creation of an Indian reservation reserves all water necessary for the purposes for which the reservation was created.

Those interests had not been transferred to the mixed-bloods and remained in the possession of the United States as trustee for the tribe. The AUCU therefore filed suit in the U.S. Court of Claims on March 14, 1969, to recover the value of those assets. The suit should have been a slam dunk, the United States already being on record that the rights had been lost. The United States must, in logic, either give the Affiliated Utes their share of the assets or compensate for their value. The Department of Justice and the Affiliated Utes prepared a joint statement agreeing what those "intangible" rights were.

The scene was alarming when the Court of Claims convened. Two of the three judges were so old they neither moved nor spoke during the proceedings. Judge Robert L. Kunzig, the youngest of the three judges, who presided and appeared to be breathing, went out of his way to express hostility toward American Indians.

Judge Kunzig and his colleagues had previously issued an order, without a hearing, dated October 20, 1972, that the fact that no property had actually been transferred to the mixed-blood Utes was merely a theoretical impasse, bridged by indulging in the "fiction" that the property rights were "appurtenant" to the three mixed-blood corporations and therefore "distributed" when they were formed.[47] The hearing on October 4, 1977, was to determine if the October 20, 1972, order left the mixed-blood Utes without any recourse for their lost rights.

The court refused to consider the agreed fact that in 1961 the BIA had denied the AUCU requests for an independent lawyer or that the Ute Distribution Corporation's efforts to secure independent counsel were frustrated until after August 27, 1964, by Superintendent Martin M. Zollar and Area Director Frederick M. Haverland's refusal to pay any lawyer but John Boyden. The AUCU could not take action to assert its rights, I as counsel for the AUCU reasoned, for the BIA had amended Boyden's contract, allowing him to *oppose* the AUCU's interest. The court either refused to consider or ignored that the

range corporation stock had been acquired by the United States in trust for the tribe in 1960 and thereafter, three years before Anita, Dot, and Marguerite first appeared at my office to complain about their flat crankshaft.

A scant three weeks later—much less time than required to give careful consideration to the complex affairs of the mixed-blood Uintahs, the Court of Claims issued a cryptic order dated October 28, 1977, declaring that the Affiliated Ute claims were barred by the statute of limitations[48] and their rights could not be considered. The contradiction that the shares were acquired by the United States for the tribe when it was also guardian for the mixed-bloods until August 27, 1961, was never explained.

It was agreed that the assets had not been distributed and remained in trust with the United States. "The purpose of the termination act was to end the tribal status of mixed-blood Utes and to convert their status to that of ordinary American citizens," Judge Kunzig declared in his Order dismissing the Affiliated Utes' claims. "The division and distribution of assets . . . were effected by 1961, all intangible assets being conveyed either in the form of shares in the Ute Distribution Corporation or as appurtenant to land, whatever claims plaintiffs may have had matured then and became barred by the statute of limitations in 1967."[49]

The mixed-blood Uintahs still had no water, timber, hunting and fishing rights, or other services derived from their Indian ancestry. None of the three corporations had authority to deal with any of those matters. The Uintahs' heritage, which the United States promised to protect in the 1865 Treaty of Spanish Fork, was gone, and no one knew when or where.

After Arthur Watkins was defeated for reelection to the Senate in 1958 he was rewarded for his years of "service" to the Indian community by being appointed chairman of the Indian Claims Commission—a division of the Court of Claims itself. What influence his presence may have had, direct or indirect, in the decision to deny the AUCU any relief, or if it had any influence, can only be speculated.

## Of Glenda Miera

In 1962 Anita Reyos's sixteen-year-old daughter, Glenda June, had been honored as the Indian Princess of the Uintah Basin. By May 1966 Glenda had become an adult. She was having marital difficulties and needed money. Glenda had been living in Los Angeles with her husband, Ernie Miera, but they had recently relocated in Salt Lake City. Ernie began drinking too much and got into minor difficulties with the law. Anita was living in Albuquerque and could

not help, so Glenda telephoned Lena Sixkiller, president of the Ute Distribution Corporation, to see if she could get some money by selling her stock in the corporation. Sixkiller offered to come to Salt Lake City and buy it but told her that $600 was the most she could pay. Glenda then sold another share to the man at the grocery store to get money for food, but he would pay her only $400.

Glenda read in the newspaper about Judge Christensen's decision in the *Reyos* case in 1970. She came to see me, her mother's lawyer, and complained that she had not been paid a fair price for her stock. She never realized that Lena could not pay more than $600 because that was the price b'Gale had established in the market he was running with Nick Murray and Elmo Matthews. Her stock was held in trust by First Security Bank, but the bank did not tell her when it transferred her stock to Sixkiller and the man at the grocery store that she could only get $400 to $600 because its agent in Roosevelt had "rigged" the price. Glenda did not know and could not know that b'Gale's "course of business" had been the reason she did not get a fair price until after that had been determined by Justice Blackmun, speaking for a unanimous U.S. Supreme Court; but by then it was too late for her to become a plaintiff in her mother's lawsuit.

After Judge Christensen's decision, another lawsuit was filed on April 20, 1970, for Glenda and the other mixed-bloods who had been unable to join the *Reyos* case because their stock had not been sold in 1965 and they were minors when it was filed.[50] The outcome of the *Miera* case seemed a foregone conclusion. The liability of the bank had already been determined by the nation's highest court, and neither Glenda nor any of the minors could be considered tardy in filing their claims, for the bank was their fiduciary and trustee right up to the moment their stock was transferred.

By then Judge Christensen was no longer in full-time service as a U.S. district judge and the case was assigned to a new U.S. district judge, the Honorable Bruce S. Jenkins. Partial summary judgment with respect to liability was promptly entered in favor of Glenda Miera and the other minors, but the bank took an appeal to the Tenth Circuit Court of Appeals. The circuit court's opinion was that the bank should at least be permitted to *try* to show that Glenda and the other minors were not affected by its and b'Gale's conduct and remanded with directions that the trial court consider that question.

Judge Jenkins, possibly reading the appellate court's opinion as a vindication of the bank, or the Court of Claims decision as a rejection of the mixed-bloods as Indians, did an about-face and denied all of the minors, Glenda included, any recovery. Glenda "knew or had reasonable cause to know of the

allegations against the Bank before April 20, 1970," Judge Jenkins concluded. But these were matters that could not be known by Glenda or any of the minors until they were determined by the Supreme Court in 1972. Jenkins overcame that factual impasse by engaging in a fiction, as the court of claims had done. Glenda knew, Jenkins ruled, because "her lawyer had knowledge of the claims [and] had advised all Association members of the *Reyos* decision." "There has been no evidence provided to suggest that [they] needed more lenient treatment than those who were included in the *Reyos* case," he further concluded, implying that she should have sued along with her mother.[51]

Glenda's first contact with either me or Duncan was in 1968, and we could not advise persons we had never met of their rights. If we had, 1968 was well within the limitations period for a claim filed in 1970. Glenda could not file her claim in 1965, when her mother and the other *Reyos* plaintiffs did, as Jenkins required, because she was a minor until August 25, 1966. The very bank the Supreme Court found to have defrauded her was then her trustee, with her stock locked in its vault. Jenkins's reasoning implied that the bank could be expected to bring suit against itself. The law recognizes such an assumption to be mockery, however, and provides that the statute of limitations does not run against a trustee until the trust terminates and not thereafter until the breach of trust is discovered.

Stunningly, on August 3, 1983, Jenkins found *against* Glenda Miera and each of the other minor mixed-bloods. They were held to a standard of care and diligence that was impossible—literally—to comply with.

## The Range Corporation Case

The U.S. Supreme Court had found the practices surrounding the sale of Ute Distribution Corporation shares to be false and deceptive and in violation of the mixed-bloods' rights as a "member of the tribe." The Court of Claims had ruled that intangibles such as hunting and fishing and interests in the water and timber were "appurtenant" to the lands conveyed to the two range corporations, represented by and sold along with their shares. The only remaining recourse, therefore, was to demand compensation for those rights from the United States, which had reacquired the range shares for the tribe—without paying the mixed-blood Uintahs for those values or informing them that they were being acquired at a time when it still had limited duty to the mixed-bloods and control over their property until August 27, 1964.

Suit was filed on that theory for Calvin Hackford. It was the final effort of the Uintahs to salvage any vestige of their property and culture, at least insofar as I was concerned.[52]

The details of concerted action between the bank and Boyden and the conduct of the BIA detailed in this volume had by then been discovered and were introduced into evidence before the Honorable Bruce S. Jenkins. Jenkins ruled, as he had done in the *Miera* case, and as the Court of Claims had done, that the Affiliated Utes were barred by the statute of limitations. They were barred, according to Jenkins, not because of anything they knew but because Jenkins assumed, again, that their *attorney* knew or should have known. Because the Affiliated Utes had alleged in the Court of Claims that the United States had breached its trust with respect to the rangelands, Judge Jenkins wrote, "It is difficult to conceive what they knew in 1972 and thereafter that they didn't know in 1969." His justification for this conclusion was that "counsel for plaintiffs in this action was counsel for the [AUCU] in the Court of Claims proceedings."[53] The decision of the Court of Claims was not until October 1977, however, and the records of the BIA were not obtained until 1979. Jenkins failed to recognize, or ignored, as he had done in the *Miera* case, that the shares were sold by First Security Bank out of trust, that the suit was against the bank as trustee, and that the statute of limitations does not run against a trust beneficiary. Jenkins's decision was affirmed by the U.S. Court of Appeals for the Tenth Circuit, which also declined analysis of those matters, in an opinion dated January 31, 1983.

The Court of Claims proceedings, the *Miera* case, and the rangeland cases indicate that the plight of the mixed-blood Uintahs did not lend itself to judicial resolution. All three cases seem to be expressive of an attitude that the termination episode must be closed. Each of them declares the mixed-bloods' rights final and conclusive as of August 27, 1961, when the first termination proclamation was published, whatever the consequences to the individual Indians or the Uintahs as a group. "Just get it over with," Watkins's attitude, was the attitude adopted by the judiciary. The wrongs to the Uintah Utes were consigned to history and any disturbing facts suppressed by invoking the statute of limitations. The continued duty of the United States extending to August 27, 1964, was ignored, and no consideration was given to how the BIA and Boyden manipulated and controlled the mixed-bloods until 1963, preventing them from securing independent counsel and advice.

When the appeal of Judge Jenkins's decision concerning the range corporations was argued before the court of appeals on September 14, 1982, as attorney for the Affiliated Utes I reasoned that the bank had promised, in the contract the BIA had entered into with it for the mixed-bloods, to "give effect to the objective of the Government of the United States to terminate the government supervision of the members of the mixed-blood members of the Ute

Indian Tribe in a manner which will provide . . . every opportunity for assistance in becoming self-reliant individuals, and which will protect them against the improvident dissipation or loss of their assets." The bank was to give "careful and sympathetic consideration" to the acquisition of "real property for farm and business" and to be "mindful that conservation of the assets of a beneficiary until he reaches the age of 21 years is desirable."

"That doesn't mean that the property shouldn't be sold," the old man in the judicial robes challenged the no-longer-young lawyer representing the mixed-bloods.

"It doesn't mean that it should be sold, immediately, either," I reasoned.

The old robed man was Judge Oliver Seth, now chief judge of the court of appeals, the same judge who had pronounced the sale of Ute Distribution Corporation shares an "ordinary banking transaction." That judgment had been reversed by Justice Blackmun's opinion in the *Affiliated Ute* case because of its insensitivity to the rights of terminated Indians. Seth, oblivious of his prior reversal, applied the same reasoning to reject the claims of the mixed-bloods over the sale of their range shares. The bank had entertained an offer to sell the range a mere three days after regulations permitting their sale had been published, at Boyden's behest. The bank had then negotiated the sale of an area larger than many U.S. counties and as large as some entire states in the short space of nine days. No consideration or concern was given to the cultural value the land represented. But Judge Seth, at least, saw no breach of trust.

Notions about Native Americans being entitled to protection of the laws equivalent to that available to other citizens or to equity (in the sense that solemn promises entered into for their benefit should be enforced) appear to be difficult for some to comprehend. The other two judges making up the three-judge panel displayed little more sensitivity. The cultural values of the mixed-bloods must be forced into neat, tidy conventional legal formulas relating to property law. Other cultural and social values are not susceptible to consideration. Complaints having to do with tangible property could be adjudicated, but those involved in cultural considerations could not.

The events demonstrate that the mixed-bloods were incapable of managing their affairs, however, and they were made more so by the confusion termination created for them. Factionalism was created by dividing the mixed-bloods into different groups—some like Art Workman and Margaret Sprouse trying to make economic use of the range, others like Callie Hackford trying to salvage it for their livestock, and others like Melvin Reed just trying to convert it to cash. Factionalism, confusion, and frustration over the change in the private treaty explained why Elmer Hackford and Mac Murdock asked for the regulations to

be published *without* the private treaty. I found my own efforts to vindicate their rights hampered and perhaps prevented by the effects of factionalism and confusion. Callie Hackford, who was the lead plaintiff in the suit over the range corporations, even told the court that he no longer wanted to participate in it because he felt it would somehow jeopardize his water rights.

The courts may have felt incapable of adjudicating rights of a group so lacking in unity or common purpose. They may have failed to recognize that the mixed-bloods' inadequacies lay at the root of the problem and that failure of the BIA to protect them, while Boyden and Curry exploited their weaknesses, was in the end the failure of the entire program.

"The complex, truly unique socio-legal problems presented cannot be appreciated without stepping, in an allegorical sense, in a Ute's moccasins," I urged. "To get that flavor, the Court should consider the manuscript, 'Of Worthier Blood,' [later, 'The Dispossessed'] a draft of which is part of the Record."[54]

Thus the court of appeals had available to it the manuscript of this volume—a unique opportunity to read what history would say of its work. The judicial process reacts to changes slowly, however, and the judges refused to either accept or consider the manuscript—not because it was not pertinent, but because it did not fit the customary neat format of a legal brief.

## POSTSCRIPT

In 1976, Congress's Task Force 10 recognized that there was "BIA mismanagement of trust assets, and non-ethical and illegal BIA administrative actions through each phase of the termination process." Nothing was ever done to correct the situation as to the mixed-blood Utes.

Today, thirty years after Arthur Watkins, John Boyden, and Ernest Wilkinson began their moves against the culture of the Uintah Utes, these Indians are no more in the American mainstream than when the episode began. I still receive telephone calls from frightened and confused Indians, frequently in the early hours of the morning: "How is our case going?" "Will there be any money paid out?" "Please help. They arrested my husband because he was drunk." "Lend me a few dollars. I need to get back to the reservation." "What happened to our hunting and fishing rights?"

Nor is the frustration and confusion confined to mixed-bloods. Maxie Chapoose came to me on September 30, 1996, as this work was in the final stages of composition, so frustrated and confused by the interference of the Tribal Business Committee in the conduct of his business on tribal assigned lands that he *wanted* to be terminated and had already approached Senator

Orrin Hatch (R.-Utah) with that proposal. Maxie was among the minority of full-blood Uintahs who remained in the tribe. He had been a representative of the Uintahs on the business committee during the time the Termination Act was being implemented and was one of the representatives of the tribe in attendance when the *Affiliated Ute* case was presented to the U.S. Supreme Court.

Maxie was asked to read what he said to me in 1968 about wanting his only son to be able to say "I am an Indian 'and proud of it,'" and to President Eisenhower in 1958 objecting to the events surrounding termination. He still felt the same, Maxie said, and had succeeded in having a Ute tribal judge order his son placed on the full-blood roll, despite the fact that his mother is non-Indian and the provisions of the termination act that those of less than 51 percent Indian ancestry would no longer be so recognized. He had nevertheless resolved to be terminated if that was necessary to gain control of his own property and free himself from interference by the business committee.

"This is not the same as termination," Maxie had stated to Hatch, for he was proposing "voluntary withdrawal of tribal members without penalty of losing benefits." I gave Maxie my opinion that he could and should aspire to achieve greater control over his own property but cautioned him that termination would mean loss of benefits, as it had for the mixed-bloods, and he should not jeopardize his rights as an American Indian. Those rights, I explained, were additional rights as an American citizen and even if he could not make immediate use of those rights, they might be valuable to his son, his grandchildren, or his progeny at some unforeseen time in the future.

In May 1997 Oranna Felter, the former Oranna Moosman née Bumgarner, wrote to me inquiring if I had any information indicating that there was anything improper in relation to the tribe's litigation against her mother's (Liz Bumgarner) estate. By then the tribe had recovered her mother's property included in the reservoir project under the right of refusal granted to *members* of the tribe. Legal ethics required me to tell Oranna that I could not talk to her about the matter without the consent of the lawyer she had replaced me with, for after she discharged me we were in an adversary relationship. The lawyer who replaced me happened to be the Honorable David Sam, U.S. district judge. The consent I requested has not been given.

Maxie's and Oranna's frustration is obvious. It stands as an example of how, in 1954, the advocates of termination were able to claim that the Utes, or any Indians, *wanted* to be terminated. How Maxie, Oranna, and others like them will deal with their frustration is unresolved as this work goes to press.

Other full-blood Utes, by contrast, seem relatively secure. With their culture to rely on and with ever more astute management of tribal resources, they

seem to have prospered. The "Uncompahgre Plan" advanced by Francis McKinley, with the help of Robert Bennett and Ab Harris, has become reality. They, together with full-blood White Rivers and the minority remnant of the Uintah full-bloods, have succeeded to full ownership of the Uintah Valley reservation and its assets. They are now seen on television extolling the Indian way of life and lamenting termination and reciting John Boyden's claim that the mixed-bloods "chose" to go their own way. They are unable to explain how that choice was made, or why, or even what "termination" was or how it adversely affected all of them in various ways—never realizing that they too have been made poorer in the process.

# NOTES

Documents relating to the termination program of the Ute Indians of the Uintah and Ouray Reservation, Utah, are collected at Parker M. Nielson Papers, Special Collections, Marriott Library, University of Utah, Salt Lake City, Utah (cited as PMN Papers). Index numbers or abbreviations within the PMN Papers are as follows:

(X 000) or (B 000)—The prefix "X" refers to documentary exhibits in Hackford v. First Security Bank, 521 F Supp 541 (D Utah 1981). Those prefixed "B" refer to exhibits of the Defendant Bank.

(AUC 000)—"AUC" refers to published and unpublished documents, testimony, or audio recordings furnished by individual members of the Affiliated Ute Citizens of the State of Utah or relating to their affairs. For convenience, the location of statements on audio recordings may be expressed as a fraction of the recording's total length, as 111/444 indicating 1/4 of the total recording.

BIA Records—National Archives, Washington National Records Center, Suitland, Maryland, Records of the Bureau of Indian Affairs, File no. 13304-54-077, part l, part 1A, part 1Al, part 1B, part 3, and part 4; File no. 1251-59-077, part 1 and part 1A; File no. 1751-54-070, 1980-62-070, and 5650-61-013, RG 75. Photo reproductions of all are in (AUC 976) PMN Papers.

## INTRODUCTION

1. S. Lyman Tyler, "The Spaniard and the Ute," 344. The parallels between Ute legends and those of other bands and tribes are interesting, even if not accepted as fact. Early Spanish explorers found a common belief among various Southwest Indian groups

that all Indians originated in a land called Teguayo where there was a large lake called Copala. The inference is strong that the lake, if it existed at all, was ancient Lake Bonneville, or its vestige, the Great Salt Lake, and the land that of the Utes. See S. Lyman Tyler, "The Myth of the Lake Copala and Land of Teguayo," 313.

2. The Utes' lands are estimated to have included 60 million acres. Frederick Webb Hodge, ed., *Handbook of American Indians North of Mexico*, 2:874; "Statement Concerning the Uncompahgre Grazing Reserve, the Historic Background," 6 Feb. 1943, 2, (AUC 545) PMN Papers.

3. Fred A. Conetah, *A History of the Northern Ute People*, 27–28; Tyler, "The Spaniard and the Ute," 345–346; William C. Reed, Interview by Parker M. Nielson, 1 Sept. 1973, audiocassette, tape no. 2, side B, 380/390, (AUC 755) PMN Papers.

4. Conetah, *History*, 8–9; David Rich Lewis, *Neither Wolf Nor Dog: American Indians, Environment, and Agrarian Change*, 30; Paul R. Sanchez, "Ute Indian Social Progress, Part III," (AUC 8) PMN Papers.

5. Ute Indian Tribe, "Ute Ten Year Development Program," ca. summer 1955, 60, copy in (AUC 541) PMN Papers. Some of the non-Indians were adopted by Ute bands. Fred Mart, "Speech at Uintah Indian School," 26 Jan. 1938, Records of the Ute Delegation, March 1945, (AUC 545) PMN Papers; Paul Bailey, *Walkara: Hawk of the Mountains*, 22; Hubert Howe Bancroft, *History of Utah*, 12; Reed, Interview, tape no. 2, side B, 180, 203/390. The Ute's nonexploitive system of communal landownership is described at ibid., 110, 180, 203/390.

6. Floyd O'Neil, "The Utes, Southern Paiutes, and Gosuites," 30.

7. Fray Angelico Chavez, ed., and Ted J. Warner, trans., *The Dominguez-Escalante Journal*, 54–57. See also, Bancroft, *History of Utah*, 12. Juan Maria de Rivera led the first recorded expedition of non-Indians to the areas occupied by the Utes in 1761, but other expeditions, possibly earlier, were unrecorded, in part because the Spanish government restricted trading with the Indians. See Joseph J. Hill, "Spanish and Mexican Exploration and Trade Northwest from New Mexico into the Great Basin, 1765–1853," 3, 4, 16–23.

8. One telling incident is that Arapeen, brother to Ute war chief Wakara, seized a captured Piaute child by the heels and dashed its brains out against a wagon wheel before the eyes of incredulous Mormons. Arapeen then accused the Mormons of causing the child's death by refusing to pay the horse or gun price he demanded. Bancroft, *History of Utah*, 475; Juanita Brooks, *John Doyle Lee: Zealot, Pioneer Builder, Scapegoat*, 163–64. Thereafter, the Mormons, though opposed to slavery, usually purchased the Utes' captives. Paul Bailey, *The Claws of the Hawk: The Incredible Life of Walker the Ute*, 157–58.

9. Hodge, *Handbook*, 2:874. The Utes reportedly traded for horses at the Taos fair of 1706. O'Neil, " The Utes," 30; Tyler, " Myth of Lake Copala," 325. They may have acquired horses as early as 1600–1640. Conetah, *History*, 28; S. Lyman Tyler, " Before

Escalante: An Early History of the Yuta Indians and the Area North of New Mexico," chaps. 4, 5; Omer C. Stewart, "Ute Indians," 49.

10. With the horse, "the Utes raided and traded in western Oklahoma and the panhandle of Texas, and in every direction." Tyler, "The Spaniard and the Ute," 344–45; Conetah, *History*, 28.

11. Mart, "Speech." Dominguez and Escalante reported mounted Ute warriors in large numbers on the western slope of the Rocky Mountains and in northeastern Utah in 1776. Chavez and Warner, *The Dominguez-Escalante Journal*, 29, 31, 39, 45; O'Neil, "The Utes," 30–31.

12. Conetah, *History*, 28–35, 44; U.S. Congress, Senate, Committee on Interior and Insular Affairs, *Hearings on S. 1357 and H.R. 3795, 82d Cong., 1st sess.*, 65, (AUC 105 and 459) PMN Papers. Long before the arrival of Euro-American settlers, the Spaniards considered the Utes "the most valiant Indians that have been encountered in these regions" and entered into alliances with them. Fray Juan Amando Neil as quoted in Tyler, "The Spaniard and the Ute," 345–46, 350–51, 354–55.

13. Richard W. Sadler, "Miles Goodyear," 227–28; Dale Morgan, *The Great Salt Lake*, 194; Carter Eldredge Grant, *The Kingdom of God Restored*, 421.

14. Bailey, *Walkara*, 14. The Uintahs, or Uinta-ats in aboriginal times, were one of several (by some accounts as many as eleven) bands of Utes in what is now Utah. These bands included the San Pitch, Pahvants, Timpanogotzis, Wansitz, and others. Lewis, *Neither Wolf Nor Dog*, 23. As Euro-Americans arrived, several bands coalesced into the Tumpanawach. Tina Kelley and Kathryn L. MacKay, "Wakara," 615. After their removal to the Uintah Valley in 1865–69, all of the Utes from the Great Basin became known collectively as Uintahs. Hodge, *Handbook*, 2:874.

15. Bailey, *Walkara*, 14; Bancroft, *History of Utah*, 313, 473; Bailey, *The Claws of the Hawk*, 109–24, 128. Wakara (sometimes Walkara ) was properly leader of the San Pitch band whose principal encampment was near present-day Manti. William Lewis Manley, the California pioneer, prospector, and miner, reported meeting Wakara in the Uintah Valley in 1849 and his wonder at Wakara's "knowledge . . . respecting the country, of which he was able to make us a map in the sand, point out to us the impassable canyon, locate the hostile Indians, and many points which were not accurately known by our explorers for many years afterward." As quoted in Bailey, *Walkara*, 89–90.

16. Conetah, *History*, 33; Bancroft, *History of Utah*, 313n; Bailey, *Walkara*, 36–37; Reed, Interview, tape no. 2, side B, 270/390.

17. Sadler, "Miles Goodyear," 227–28; Morgan, *Great Salt Lake*, 194; Grant, *Kingdom of God*, 422.

18. Morgan, *Great Salt Lake*, 159, 196–97, 200. Mormon lore claims that Brigham Young had seen the Salt Lake Valley in a vision. He reportedly announced, "This is the right place," when he first saw it.

19. Floyd A. O'Neil and Stanford J. Layton, "Of Pride and Politics: Brigham Young as Indian Superintendent," 237. O'Neil and Layton, quoting an 1853 statement of Brigham Young, conclude: "The Mormons had clearly demonstrated their determination to claim the land they needed for settlement, regardless of Indian resistance, and to protect their foothold in the Great Basin at all costs." Ibid., 236.

20. Brooks, *John Doyle Lee*, 173.

21. Wakara was frequently in conflict with Soweitte over remaining at peace. Howard A. Christy, "The Walker War: Defense and Conciliation as Strategy," 408. Wakara was prepared to fight the Mormons in April 1849, for example, but Soweitte insisted on his policy of peace. Bancroft, *History of Utah*, 308–9.

22. Dominguez and Escalante promised the Utes living near Utah Lake, whom they called Lagunas, that they would return in one year. Chavez and Warner, *The Dominguez-Escalante Journal*, 55–58. The Mormon invaders were clearly not the Big Hats, and they threatened the Ute lands like the hated Commanches (ibid., 45, 47, 56), all of which left Wakara in a dilemma. Bailey, *Walkara*, 47.

23. Bancroft, *History of Utah*, 313; Howard A. Christy, "Open Hand and Mailed Fist," 222.

24. Bailey, *Walkara*, 70, quoting Journal History of the Church of Jesus Christ of Latter-Day Saints, 2 June 1849, Salt Lake City (hereafter cited as Journal History), a multivolume chronological scrapbook of newspaper clippings, letters, and minutes, 1830 to present. The native fishery, destroyed by 1900, is described by Joel C. Janetski, "Utah Lake," 5–6. Wakara probably contemplated that the use of the Ute territory by the Mormons would follow Ute customs—a friendly band would be allowed to make use of the land, then move on. Bailey, *The Claws of the Hawk*, 204.

25. As of summer 1849, more than 15,000 Mormons had migrated to Utah Territory. Grant, *Kingdom of God*, 465.

26. Conetah, *History*, 21, 25, 38; Bailey, *Walkara*, 61.

27. O'Neil, "The Utes," 36; Bancroft, *History of Utah*, 309.

28. Christy, "Open Hand," 223.

29. Brigham Young ordered all of the Uintah Ute men in Utah Valley killed. Christy, "Open Hand," 224.

30. Ibid., 225.

31. Howard Stansbury, *Exploration and Survey of the Valley of the Great Salt Lake of Utah*, 148–49. See also Conetah, *History*, 38; Bancroft, *History of Utah*, 309–10.

32. Lewis, *Neither Wolf Nor Dog*, 35; Janetski, "Utah Lake," 5–31; O'Neil, "The Utes," 28.

33. Christy, "Open Hand," 227–31; Journal History, 20 Feb., 21 and 29 Apr. 1850, as cited in Bailey, *Walkara*, 100–102.

34. Lewis, *Neither Wolf Nor Dog*, 35; Christy, "Open Hand," 217; Brigham Young, Letter to James W. Denver, Commissioner of Indian Affairs, 6 Jan. 1858, as quoted in Juanita Brooks, *The Mountain Meadows Massacre*, 158–59.

35. Ray Allen Billington, *Westward Expansion: A History of the American Frontier*, 546–47.

36. Bailey, *The Claws of the Hawk*, 169.

37. Christy, "The Walker War," 400, 404.

38. Kelley and MacKay, "Wakara," 615; Grant, *Kingdom Of God*, 469; Bailey, *Walkara*, 153–57, 168.

39. Kelley and MacKay, "Wakara," 615; Bancroft, *History of Utah*, 474, 477–78; Bailey, *Walkara*, 138–49, 168–69; Bailey, *The Claws of the Hawk*, 353.

40. Stanley Vestal, *Jim Bridger*, 171–74.

41. "Meeting of the Snakes and Utahs," *Deseret News* (Salt Lake City), 12 Sept. 1855, 213, (AUC 545) PMN Papers; D. B. Huntington, "Meeting of the Snakes and Utahs," *Deseret News*, 19 Sept. 1855, 221, (AUC 545) PMN Papers.

42. See John A. Peterson, " Black Hawk War," 43–44; O'Neil, "The Utes," 37–38; Floyd O'Neil, "A History of the Ute Indians of Utah until 1890," 70–85.

43. *Ute Indian Tribe v. The State of Utah*, 521 F Supp 1072, 1093–95 (D Utah, 1981), slip opinion, 35, 37–38 in (AUC 834) PMN Papers.

44. Three farms were established in the 1850s to provide support for the Uintahs and were to have been set aside as a permanent reserve. By 1860 the farms had become entangled in a dispute between the Mormons and the federal government; agent Benjamin Davies sold them to buy food for the Indians. The Treaty of Spanish Fork provided that 291,480 acres of Indian farms be sold and the proceeds be applied to improvements in Uintah Valley. Ibid. 1094, slip opinion, 35.

45. National Archives, " Negotiation of an Unratified Treaty of June 8, 1865, with the Ute Indians" (hereafter Treaty Negotiations), Unratified Treaty Files, RG 75; Floyd A. O'Neil and Kathryn L. MacKay, *A History of the Uintah Ouray Ute Lands*, 7.

46. Ibid.

47. Conetah, *History*, 54–55.

48. Treaty Negotiations.

49. "Brigham Young was a key figure in the negotiations. On prior occasions Young had visibly been at odds with the federal agents in their dealings with the Utes. At Spanish Fork, Young and Irish presented a united front, which pleased the Indians assembled:

> Kon-Osh (Geo. Bean, Interp.): . . . I like this good friendly council, I always liked a council where it is good and friendly and where all agree together; and my friends like it. It pleases me very much to see

> Supt. Irish and Brigham agreeing on this treaty and traveling together and talking to the Indians. In former times it has been when an agent came here President Young would stay at one side; and I was sorry that they could not agree."

Quoted in *Ute Tribe v. Utah*, 1095, slip opinion, 36–37; O'Neil and Layton, "Of Pride and Politics," 236.

50. Treaty Negotiations; Reed, Interview, tape no. 1, side A, 399/444.

51. Ibid.; *Ute Tribe v. Utah*, 1094, slip opinion, 35.

52. Superintendent Benjamin Davies, Letter to Commissioner Dole, 30 June 1861, U.S. Department of Interior, Commissioner of Indian Affairs, *1861 Annual Report*, 139; Bancroft, *History of Utah*, 629:

> The Natives had no alternative but to steal or starve; the white man was in possession of their pastures; game was rapidly disappearing, in the depth of winter they were starving and almost unclad, sleeping in the snow and sleet, with no covering but a cape of rabbit's fur and moccasons [*sic*] lined with cedar bark, even in the summer they were compelled to subsist on reptiles, insects, roots and grass seeds.

*Ute Tribe v. Utah*, 1094 n 60, slip opinion, 35. A year earlier, Congress had mandated the sale of the central Utah Indian farms and confirmed the establishment of the Uintah Valley Reservation, but failed to ratify the treaty. Ibid., 1095, slip opinion 38.

53. Brigham Young, as quoted in Economic Conditions of the Uintah Irrigation Project, (AUC 545) PMN Papers, quoting John A. Widsoe, "Discourses of Brigham Young," 123; Jesse D. Jennings, Elmer R. Smith, and Charles E. Dibble, as quoted in O'Neil, "The Utes," 100.

54. Conetah, *History*, 79.

55. Mildred Miles Dillman, *Early History of Duchesne County*, 74, 78, copy in (AUC 969) PMN Papers. By other accounts, the Mormon surveying party reported unfavorably that the amount of land suitable for cultivation was limited, but the secretary of interior reported the area as "abounding in valleys of great fertility." *Ute Tribe v. Utah*, 1094, slip opinion, 35–36.

56. Executive Order of October 3, 1861, in Charles J. Kappler, *Indian Affairs, Laws and Treaties*, 2:900; "Statement Concerning the Uncompahgre Grazing Reserve," 2.

57. Dillman, *Early History*, 78. Dillman, a Uintah Valley historian in the 1950s, reported, based on interviews with Utes, that the first settlement by Euro-Americans in Utah Territory was in the Uintah Valley in 1828, long before the coming of the Mormons. Toopeechee Reed, his nephew Jim Reed, and two other white men established a trading

post at a spring along the Tewinty (Uintah) River. The Reeds were well liked by the Utes. When Jim Reed married a Ute-Shoshone woman and determined to live among the Uintahs, he was adopted by them according to their customs. Ibid., 69; John D. Barton, "Fort Robidoux," 201. By World War II many of the Uintah Utes in the Uintah Valley were descended from Jim Reed.

In 1832 the Reeds sold out to a trapper named Antoine Robidoux (or Rubidoux) and the place was renamed Fort Robidoux. Robidoux treated the Utes cruelly. Ute women were bought and sold among the drunken whites, or sold into debauchery to the Spaniards in New Mexico. Children fathered by the whites were often buried alive at birth. On one occasion, one of the whites tied a child to a tree and used the infant for target practice. In 1844 the outraged Utes burned Fort Robidoux to the ground. Every white man at the post was massacred. Robidoux escaped because he was away at the time. Dillman, *Early History*, 78; Joseph J. Hill, "Antoine Rubidoux, Kingpin of the Colorado River Fur Trade, 1824–1844," 131–32.

58. *U.S. Statutes at Large*, 13 (1864): 63, as amended 20 (1878): 165; Ute Delegation Records; Ute Tribe, "Ten Year Program" 69; Hodge, *Handbook*, 2:875.

59. The treaty system was finally abandoned under the provisions of the *Appropriations Act of March 3, 1871, U.S. Code*, vol. 25, sec. 71 (1994). O'Neil and MacKay, *A History of Ute Lands*, 7, suggest that "since the Utah War, the Mountain Meadow Massacre, and the non-participation of the Mormons in the Civil War, the senators were ill-disposed to do anything that favored Mormon interests." The unratified treaty is quoted in Kappler, *Indian Affairs*, 1:695–98, copy in (AUC 216) PMN Papers.

60. David Rich Lewis, "Ute Indians—Northern," 608; Reed, Interview, tape no. 1, side A, 110, 315/444.

61. Wilson Rockwell, *The Utes: A Forgotten People*, 68; James Warren Covington, "Federal Relations with the Colorado Utes, 1861–1865," 258.

62. Covington, "Federal Relations," 260.

63. Rockwell, *The Utes*, 69–70. According to Covington, "Federal Relations," 261, Indians from the Tabeguache, Capote, and Wiminuche bands attended, but the Moaches remained away because of an attack by the Cheyenne, while the agent from western Colorado failed to notify "his charges"; "[John] Nicolay [President Lincoln's secretary who recorded the meeting] had a slightly different account concerning the Indians who were present—one Capote and three Moache leaders attended the conference. Several Wiminuche started on the trip but changed their minds and retraced their steps. The Uintahs and Yampah band declined to send representatives because their horses could not stand the journey."

64. "Since there was not sufficient representation of the other bands present to act upon a treaty, the commission decided to negotiate only with the Tabequaches." Covington, "Federal Relations," 262. The treaty is in Kappler, *Indian Affairs*, 2:856.

65. On August 18, 1846, the U.S. Army sent William Gilpin north from Santa Fe to confer with the Utes. He brought sixty Ute leaders from the San Luis Valley to Santa Fe where they agreed on October 13, 1846, to be peaceful. The first official treaty between the Utes and the United States was after the defeat of Mexico in 1848 at Abiquiu, New Mexico, on December 30, 1849. Rockwell, *The Utes*, 64.

66. Ibid.; Minutes of the Council held with the Ute Indians, at Los Pinos Agency, September 6–12, 1873, U.S. Department of Interior, Commissioner of Indian Affairs, *1873 Annual Report*, 43d Cong., 1st sess., H. Ex. Docs. v. 4, pt. 1, no. 1, pt. 5, 465.

67. Kappler, *Indian Affairs*, 2:856.

68. Conetah, *History*, 106; Rockwell, *The Utes*, 88; Thomas F. Dawson, "Major Thompson, Chief Ouray and the Utes," 119. "For that matter Ouray was the only chief who could make himself understood in English [but] among themselves, they could not be persuaded to hail Ouray at once as their chief." Sidney Jocknick, *Early Days on the Western Slope of Colorado and Camp-fire Chats with Otto Mears*, 114–15.

69. Secretary of the Interior Carl Schurz called Ouray "by far the brightest Indian I have ever met." Quoted in Rockwell, *The Utes*, 164. See also, Albert B. Reagan and Wallace Stark, "Chipeta, Queen of the Utes and Her Equally Illustrious Husband Noted Chief Ouray," 106. Major J. B. Thompson "made up my mind to cultivate him in order to be able to use him for the benefit of the whites." As quoted in Dawson, "Major Thompson," 119–20.

70. Conetah, *History*, 106; Jocknick, *Early Days*, 114–15.

71. The treaty also provided for an agency to be established for the Northern Utes on the White River near present-day Meeker, Colorado. The Utes in that area were thereafter known as White Rivers. The agency for the Tabeguache (Uncompahgre) was to be established on the Los Pinos River; but when it was found that the site was not on the reservation as defined in the treaty and the Uncompahgres would not move farther than a branch of Chochetopa Creek fifty-five miles west of Saguache in what is now western Saguache County, the agency was established there and the stream was renamed Los Pinos Creek to conform to the treaty. Rockwell, *The Utes*, 72, 81; Dawson, "Major Thompson," 115. The minutes of the 1873 treaty negotiations with the Utes and reports concerning it are replete with expressions of dissatisfaction and mistrust that the surveyors entered what the Indians understood to be reservation lands to locate its true boundaries. Commissioner of Indian Affairs, *1873 Annual Report*, 452–54. See also Dee Brown, *Bury My Heart at Wounded Knee: An Indian History of the American West*, 367–68; George W. Manypenny, *Our Indian Wards*, 395–97.

72. Rockwell, *The Utes*, 96; Hodge, *Handbook*, 2:875; Commissioner of Indian Affairs, *1873 Annual Report*, 451–52.

73. Many of Ouray's people believed the whites had clearly misrepresented the boundaries of the reservation to him and the other headmen when they agreed to the 1868 treaty. Utes in the other bands had been bitter for years, because the lands that Ouray agreed to give up in the treaty of 1863 did not even belong to the Uncompahgres. Their headmen had not attended the conference. Commissioner of Indian Affairs, *1873 Annual Report*; Brown, *Bury My Heart*, 367–68.

74. Conetah, *History*, 44–45; Rockwell, *The Utes*. 96; Manypenny, *Our Indian Wards*, 405–13.

75. Herman J. Viola, *Diplomats in Buckskins: A History of Indian Delegations in Washington City*, 65–68; Rockwell, *The Utes*, 96–97.

76. Dawson, "Major Thompson," 121.

77. Commissioner of Indian Affairs, *1873 Annual Report*, 465.

78. Ibid.

79. Ibid., 466, 469.

80. Ibid., 480.

81. Ibid., 474–75, 477; Manypenny, *Our Indian Wards*, 415.

82. Commissioner of Indian Affairs, *1873 Annual Report*, 479; Manypenny, *Our Indian Wards*, 414–18.

83. Commissioner of Indian Affairs, *1873 Annual Report*, 454. Brunot himself reported that "[the Utes] had received the impression that the commission was appointed to purchase from them only the mines already discovered, and these they were willing to sell with the right of way by one road to reach them. . . . None of them were willing to sell any part of the agricultural lands of the reservation." Ibid., 452–53.

84. Ibid., 479: Viola, *Diplomats*, 36–37. Cf. Rockwell, *The Utes*, 100.

85. Conetah, *History*, 57; Viola, *Diplomats*, 63; Rockwell, *The Utes*, 107; Dawson, "Major Thompson," 119.

86. Rockwell, *The Utes*, 90, 104; Reed, Interview, tape no. 1, side A, 315/444.

87. Brown, *Bury My Heart*, 367–89; Hodge, *Handbook*, 2:876.

88. Brown, *Bury My Heart*, 374, 378–80; Manypenny, *Our Indian Wards*, 421–26.

89. Hodge, *Handbook*, 2:876.

90. Howard Fast, *The Last Frontier*, 133, 148–53.

91. Hodge, *Handbook*, 2:876; Manypenny, *Our Indian Wards*, 427–31.

92. Conetah, *History*, 111; Viola, *Diplomats*, 60, 67–68.

93. Conetah, *History*, 111–12; Helen M. Searcy on Otto Mears, as quoted in Rockwell, *The Utes*, 168–70.

94. Kappler, *Indian Affairs*, 1:180; "Statement Concerning the Uncompahgre Grazing Reserve," 2.

95. Conetah, *History*, 111–12; O'Neil, " The Utes," 41; Reed, Interview, tape no. 1, side A, 315/444.

96. O'Neil, "The Utes," 40–42; Conetah, *History*, 112; Rockwell, *The Utes*, 174–75; Executive Order of January 5, 1883, as printed in Kappler, *Indian Affairs*, 2:901.

97. Jocknick, *Early Days*, 226.

98. Conetah, *History*, 106, 113; Rockwell, *The Utes*, 168.

99. J. William Workman and Mildred Miles Dillman, "History of Fort Duchesne," 4–5, (AUC 186) PMN Papers.

100. O'Neil and MacKay, *A History of Ute Lands*, 20; Peterson, "Black Hawk War," 43–44; O'Neil, "A History of the Ute Indians," 70–85. According to O'Neil, the commencement of the "war" was "a council . . . held in central Utah (probably Utah County) in the summer of 1863" and "the attitude of the Indians was probably never that they would be able to expel the whites but only that they wanted food." Ibid., 56. See also, Bancroft, *History of Utah*, 632–33; Floyd A. O'Neil, "The Reluctant Suzerainty: The Uintah and Ouray Reservation," 131.

101. Peterson, "Black Hawk War," 44; Bancroft, *History of Utah*, 632–33; T. A. Byrnes, Letter to Commissioner of Indian Affairs, 21 Aug. 1887, as quoted in U.S. Department of Interior, Commissioner of Indian Affairs, *1881 Annual Report*, 2:283–86; Conetah, *History*, 116; O'Neil, "Reluctant Suzerainty," 135.

102. O'Neil and MacKay, *A History of Ute Lands*, 22.

103. Byrnes, Letter to Commissioner, 283–86: *Ute Tribe v. Utah*, 1102, slip opinion, 42; O'Neil and MacKay, *A History of Ute Lands*, 14–15; Conetah, *History*, 116; Dillman, *Early History*, 82; O'Neil, "Reluctant Suzerainty," 135.

104. Dillman, *Early History*, 82–83.

105. Ronald G. Coleman, "The Buffalo Soldiers: Guardians of the Uintah Frontier, 1886–1901," 423–25.

106. Doris K. Burton, "Vernal," 612.

107. Dillman, *Early History*, 84; Workman and Dillman, "History of Fort Duchesne," 4–5.

108. Stanley Vestal, *Warpath*, 177, 185. The "crime" of the Northern Cheyenne was trying to lead their ragged, half-frozen, and starving women and children from Oklahoma to their homes in the Black Hills, which the U.S. government had agreed they had the right to do, to die in peace and dignity. See generally, Fast, *The Last Frontier*; Mari Sandoz, *Cheyenne Autumn*.

109. Conetah, *History*, 117.

110. Coleman, "Buffalo Soldiers," 423–25. The Utes' use of the term "buffalo soldiers" is of uncertain origin. It may derive from the buffalo head incorporated in the insignia of the Tenth Cavalry. It may also be a term of respect, born of the importance of

the buffalo to the Indian and the similarity of the buffalo's mane to the hair of the black soldiers.

111. Workman and Dillman, "History of Fort Duchesne," 4–5.

112. *U.S. Statutes at Large* 30 (1897): 62–87.

113. *U.S. Statutes at Large* 25 (1888): 157; O'Neil and MacKay, *Ute Lands*, 15; *Ute Tribe v. Utah*, 1103–04, slip opinion, 44, 46.

114. O'Neil and MacKay, *A History of Ute Lands*, 15–16, 22–23.

115. General Allotment Act, *U.S. Statutes at Large* 24 (1887): 388. The Dawes Act authorized the president to parcel tribal land to individual members in tracts of 40, 80, or 160 acres, called allotments.

116. Angie DeBoe, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes*, xxiii, 92–125.

117. O'Neil and MacKay, *A History of Ute Lands*, 29.

118. *U.S. Statutes at Large* 32 (1902): 245, 263–64, 744; 32 (1903): 982, 997–98.

119. *U.S. Statutes at Large* 32 (1902): 744.

120. *U.S. Statutes at Large* 28 (1894): 337 §22; *U.S. Statutes at Large* 30 (1898): 429. See *Hagan v. Utah*, 114 S Ct 958, 961 (1994).

121. 187 US 553 (1903).

122. As O'Neil and Mackay indicate:

> The Utah Congressional delegation was particularly eager that . . . arbitrary means to open the reservation be found. Representative George Sutherland argued during the hearings that the Indians were not rightful owners of the reservation; therefore, negotiations and consent were not required in order to take the lands. He rationalized that a treaty had never been made with the Utah Utes; that since the Uintah Reservation was created by the President and Congress it could be dismantled the same way without the approval of the Indians; that the Uintah Valley Reservation belonged no more to the Uintahs than it did to any other Indians of the State; and that the federal government had the power to restore the reservation to the public domain without Indian consent as it had done in 1864 to the Utah Indian Reservations at Corn Creek, San Pete, Spanish Fork, and Deep Creek. Utah Senator Rawlings, who had participated in the futile efforts to negotiate with the Utes, further maintained that the only obligation the government ever incurred in moving the Utes from Colorado to Utah was to provide them homes, which allotment would do.

*Ute Lands*, 26–29.

123. Dillman, *Early History*, 88.

124. Minutes of Council at Uintah Agency, Utah, 18 May to 23 May 1903, quoted in *Hagan v. Utah*, 968.

125. O'Neil and MacKay, *A History of Ute Lands*, 30.

126. The 1880 removal agreement with the Colorado Utes was claimed to be the justification for returning the Uncompahgre Reservation to the public domain. The act required that all allotments be made prior to April 1, 1898, and that all lands not allotted be opened to settlement. The Indian Service decided to assign the Uncompahgres' lands north along the Duchesne River, within the Uintah Reservation. Other than eighty-three allotments subsequently approved by Congress in 1899, the Uncompahgres' lands were thus returned to the public domain. O'Neil and MacKay, *A History of Ute Lands*, 16–20. See also, *Ute Tribe v. Utah*, 1104–05, 1108 n 111; slip opinion, 52–55, 60; Ute Tribe, "Ten Year Program," 70, 76; *U.S. Statutes at Large* 30 (1897): 62–87; Dillman, *Early History*, 87–88.

127. O'Neil and MacKay, *A History of Ute Lands*, 30.

128. Dillman, *Early History*, 88.

129. *Ute Tribe v. Utah*, 1113–17 nn 125, 136, slip opinion, 70–71. "A total of 280 male adults belonged to the White River and Uintah bands. McLaughlin was able to get only 82 signatures of Utes giving their consent to the opening of their reservation. Several of these may have been bribed or were school-aged children. Officials moved forward to allot lands to the Utes without their consent." O'Neil and MacKay, *A History of Ute Lands*, 30. Cf. Viola, *Diplomats*, 134–35.

130. James McLaughlin, Letter to Secretary of the Interior, 30 May 1903, in H. Doc. No. 33, p. 7, as quoted in *Hagan v. Utah*, 976. The Ute tradition of registering dissent by silence is explained at Reed, Interview, tape no. 1, side B, 350/444.

131. O'Neil and MacKay, *A History of Ute Lands*, 32.

132. *Ute Tribe v. Utah*, 1117, 1124, 1140–42, slip opinion, 90–94.

133. Dillman, *Early History*, 444.

134. Floyd A. O'Neil, "An Anguished Odyssey: The Flight of the Utes, 1906–1908," 318–19.

135. O'Neil, "The Utes," 42–43; Mart, Speech; Hodge, *Handbook*, 876; Dillman, *Early History*, 89; Reports of the Department of the Interior, 2:121–29 (1907) as quoted in Vestal, *Warpath*, 243–50; James McLaughlin, *My Friend the Indian*, chap. 20; Brigadier-General Edward S. Godfrey, Commanding the Department of the Missouri, Annual Report, 12 August 1907.

136. O'Neil, "Anguished Odyssey," 323.

137. Coleman, "Buffalo Soldiers," 427–38; Workman and Dillman, "History of Fort Duchesne," 4–5.

138. William C. Reed, Notebook, ca. 1958, (AUC 756) PMN Papers.

139. Lewis, *Neither Wolf Nor Dog*, 69.

140. Ute Tribe, "Ten Year Program," 62; U.S. Senate Committee on Interior and Insular Affairs, *Hearings on S. 1357 and H.R. 3795*, 14, (AUC 105 and 459) PMN Papers; U.S. Department of Interior, Bureau of Indian Affairs, "Part One: III. Ute Partition Act of 1954," BIA Records, no. 26, (AUC 976 and X 430A) PMN Papers.

141. William A. Brophy and Sophie D. Aberle, *The Indian: America's Unfinished Business*, 18–20; Lewis, *Neither Wolf Nor Dog*, 9–17. Advocates of the allotment policy had proclaimed,

> No proposition is better established in the American mind than that the welfare of a state and the happiness of its citizens require that the lands be held in private proprietorship, and in tracts sufficiently small that each may be cultivated and managed in person by its individual owner, not for the purpose of making money by the sale, but for the purpose of affording homes to its citizens. . . . [T]he fundamental idea upon which our cosmopolitan republic rests is opposed to the encouragement or perpetuation of distinctive national characteristics and sentiments in our midst.
>
> If the Indian cannot learn to forgo such of his habits as are peculiar to savage life, and such of his political opinions and sentiments as are not in harmony with the general policy of our Government, then he cannot, beyond a limited period, exist among us, either as a nation or as an individual.

U.S. Congress, Senate, *Organization of the Indian Territory*, 41st Cong., Rept. No. 336, 6, 10, 11. Cf. Sen. Henry L. Dawes of Massachusetts, speaking of the Cherokee in 1885, as quoted in DeBoe, *And Still the Waters Run*, 21–22:

> The head chief told us that there was not a family in that whole [Cherokee] nation that had not a home of its own. There was not a pauper in that nation, and the nation did not owe a dollar. It built its own capitol, in which we had this examination; and it built its schools and its hospitals. Yet the defect of the system was apparent. They have got as far as they can go, because they own their land in common. It is Henry George's system, and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much more progress.

At Lewis, *Neither Wolf Nor Dog*, 7–21, the myth of horse and plow agriculture as a civilizing influence is traced from Aristotle through Thomas Jefferson to the allotment policy of breaking up communal Indian landownership in favor of individual land titles, and it is concluded that "little regard to cultural and environmental variations between tribes and reservations proved the greatest weakness of American Indian policy."

142. DeBoe, *And Still the Waters Run*, x. See also Deloria, *Custer Died for Your Sins*, 46–47.

143. DeBoe, *And Still the Waters Run*, 318–50.

144. Institute for Government Research (Brookings Institution), *The Problem of Indian Administration*, 7. (Hereafter cited as Meriam Report.)

145. David Rich Lewis, "Uintah-Ouray Indian Reservation," 572.

146. Indian Citizenship Act, *U.S. Statutes at Large* 43, (1924): 253. See also Brophy and Aberle, *The Indian*, 16.

147. Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, 19 Jan. 1937, (AUC 5) PMN Papers.

148. Ibid. "Interior Department or BIA officials . . . had formulated a model constitution, granting extensive powers to the [Department of] Interior. Constitutions were not ratified unless they contained the full range of Secretarial powers." Rupert Costo, "The Indian New Deal: 1928–1945," 13, (AUC 967) PMN Papers.

149. U.S. House of Representatives, Toby Morris, Chair., "Material Compiled by Subcommittee on Indian Affairs," 4–5, (AUC 71) PMN Papers; Reed, Notebook. Reed, Interview, tape no. 1, side A, 150, 170, 255, and 310/444, describes leadership of the three bands.

150. Morris, "Material on Indian Affairs," 4; Julius Murray, address, in the records of the Ute Delegation, March 1945, 2, (AUC 545) PMN Papers.

151. "Statement Concerning the Uncompahgre Grazing Reserve," 3. After voting to adopt the Indian Reorganization Act constitution, the Utes petitioned the secretary of the interior to restore 216,000 acres of the Uintah and Ouray Reservation land that had been opened by Congress in 1897 but remained unsold or otherwise disposed of.

152. Brophy and Aberle, *The Indian*, 20–22.

153. *Indian Reorganization Act, U.S. Code*, vol. 25, secs. 461–79 (1994).

154. Costo, "The Indian New Deal," 11; Institute of the American West, *Indian Self-Rule*, 1983, sound recordings, (AUC 842) PMN Papers. But see DeBoe, *And Still the Waters Run*, 353–54, 370, indicating that in 1934, while the legislation was pending, Collier and Sen. Elmer Thomas (D.-Okla.) "visited a number of Indian gatherings, Collier defending the Wheeler–Howard Act and Thomas opposing it . . . and during these conferences they acquired a familiarity with the situation."

155. Meriam Report, 42–43; U.S. Department of the Interior, Bureau of Indian Affairs, *Federal Indian Policies: From the Colonial Period through the Early 1970's*, 8, copy in (AUC 806) PMN Papers.

156. Meriam Report, 40–43.

157. According to Costo, "The Indian New Deal," 11:

> The 19 provisions of the Indian Reorganization Act carried extraordinary powers of the Secretary of Interior, in every part of the Act. The most controversial and restrictive was Section 16, giving tribes the power to enact constitutions and charter corporations, all with the approval of the Interior Secretary. . . . Amendments to the constitution and by-laws must also be subject to the approval and ratification of Interior. Another extremely disagreeable part of the Act determined who could be counted as a member. These restrictive measures effectively deprived the tribes of self-government, notwithstanding protestations to the contrary. Such measures were and are illegal and are violative of the treaties and agreements made with the tribes, which have been defined and redefined and confirmed through the many years since the founding of this government.

Cf. DeBoe, *And Still the Waters Run*, 368–69, 372. See also John Collier's description of the IRA's objectives:

> This affirmation of cultural diversity and cultural autonomy [under the IRA] did not imply a doctrine or practice of laissez-faire either within the Indian group or in government or the surrounding Commonwealth. It implied, rather, *the attractive and permissive way in place of the authoritarian way of swaying the human process.* It implied leadership—within and without the Indian group—of the democratic and integrative type, not the regimenting, commanding and "bossing" type.

John Collier, Indian Affairs and the Indian Reorganization Act: The Twenty Year Record, 8, (1954) as quoted in Indian Law Resource Center, Report [to President Carter] to the Hopi Kikmongwis and other Traditional Hopi Leaders on Docket 196 and the Continuing Threat to Hopi Land and Sovereignty, March 1979, 27, (AUC 835) PMN Papers.

158. "Statement Concerning the Uncompahgre Grazing Reserve," 1, 3, 8.

159. *Ute Tribe v. Utah*, 1109–10, slip opinion, 63; "Statement Concerning the Uncompahgre Grazing Reserve," 1; *U.S. Statutes at Large* 62 (1948): 72. Stephen G. Boyden, Brief in Support of Agreed Fee [to BIA], 9 Aug. 1972, 6–9, in John S. Boyden, Papers, Special Collections, Marriott Library, University of Utah, Salt Lake City, Utah, Acct. no. 823, box 51 FDI, states that the 1948 act creating the Uncompahgre addition to the reservation was drafted by John S. Boyden.

160. *Cong. Rec.*, 83d Cong., 2d sess., 1954, 100, pt. 10:13707; *Cong. Rec.*, 83d Cong., 1st sess., 1953, 99, pt. 7:9158; Sen. George W. Malone (R.-Nev.), "Abolish the Indian Bureau Now—Make the Indians People," *Cong. Rec.*, 82d Cong., 1st sess., 1951, 97, pt. 9:11911–30, (AUC 45) PMN Papers.

161. *U.S. Statutes at Large* 67 (1953): B132, copy in (AUC 48 and 935) PMN Papers. The policy was launched in 1950 by Dillon S. Meyer, commissioner of the Bureau of Indian Affairs, and was followed by Meyer's successor, Glenn L. Emmons, throughout the eight years of the Eisenhower administration. DeBoe, *And Still the Waters Run*, xxiii.

162. *U.S. Statutes at Large* 65 (1951): 193–95.

163. Uintah and Ouray Agency, "General Council Meeting," 29 May 1950, 2, (AUC 108 and 252) PMN Papers.

164. *U.S. Statutes at Large* 52 (1938): 1209–11.

165. *U.S. Statutes at Large* 60 (1946): 255–56.

166. Uintah and Ouray Agency, "Council," 29 May 1950, 5. See also "Back Pay for the Utes," *Time Magazine*, 24 July 1950, 19; "Ute Indians Hit a $31.7 Million Jackpot," *Life Magazine*, 24 July 1950, 38–40. Ute Tribe, "Ten Year Program," 4, explains that the meeting was called because Congress required that "the Uncompahgres and White River bands would have to present to the Secretary of Interior a release satisfactory to him, relieving the United States of any liability resulting from the inclusion of the Uintah band in the disposition or use of the Colorado judgment funds." Reed, Interview, tape no. 2, side A, 265–345/390 describes the meeting. See also R. Warren Metcalf, "Lambs of Sacrifice: Termination, the Mixed-Bloods, and the Problem of Identity," 323–24.

167. Uintah and Ouray Agency, "Council," 29 May 1950, 2.

168. Ibid., 6.

169. Ibid., 8–9.

170. *U.S. Statutes at Large* 60 (1946): 255–56.

171. Uintah and Ouray Agency, "Council," 29 May 1950, 10.

172. Ibid.

173. Ibid., 6.

174. Ibid., 4–5.

175. Ibid., 10.

176. Ibid., 4, 7.

177. Uintah and Ouray Agency, "General Council Meeting," 1 June 1950, 5–6, (AUC 108 and 252) PMN Papers. Resolution no. 3 is at (AUC 99) PMN Papers. The resolution recites that 246 adult members of the tribe were in attendance and that 121 (less than a majority) voted in favor, none opposed. But see constitution and bylaws of the Ute Indian tribe, (AUC 5) PMN Papers, art. IX of which requires "that at least thirty (30) percent of those entitled to vote shall vote" for a referendum to be adopted.

178. William C. Reed, Letter to Superintendent Harry M. Gilmore, 27 May 1953, (AUC 354) PMN Papers. Reed, Interview, tape no. 2, side A, 265–345/390, states that Oran Curry was chairman of the meeting; ruled that only the judgment money from the Colorado claim was considered; and that about 50 Uintahs were present but refused to vote and walked out.

179. Waubin Wanzitzs, Deposition, 18 Sept. 1969, in *Affiliated Ute Citizens v. United States*, 215 Ct Cl 935 (1977) 18–20, (AUC 1080) PMN Papers; Robert L. Bennett, Remarks on the Uintah and Ouray Program, Bureau of Indian Affairs staff meeting, 20 May 1954, 5, BIA Records, no. 79, (AUC 976 and X 457) PMN Papers. BIA, "Excerpt from Phoenix Monthly Report for March 1958," BIA Records, no. 34 (AUC 976), acknowledges that "they do not accept terms of the resolution ratified by Congress that all members, regardless of band, should share alike in claims moneys."

180. Julius Murray, Letter to Sen. Hugh Butler, 25 Feb. 1953, (AUC 313) PMN Papers; Claude E. Wood, Administrative Assistant to Sen. Clinton P. Anderson (R.-N.M.), Letter to Elizabeth C. Bumgarner, 27 Sept. 1951, (AUC 609) PMN Papers; Robert Barker, Administrative Assistant to Sen. Wallace F. Bennett (R.-Utah), Letter to Elizabeth C. Bumgarner, 12 Dec. 1951, (AUC 610) PMN Papers.

181. *U.S. Statutes at Large* 65 (1951): 194. Emphasis added.

182. Quoted in Vine Deloria, Jr., "Indians Blame Utahn for Many Injustices," *Salt Lake Tribune*, 9 Dec. 1969, 2. See also Carolyn Grattan-Aiello, "Senator Arthur V. Watkins and the Termination of Utah's Southern Paiute Indians," 268–83.

183. Gary Orfield, "Termination, Destruction and Restoration," 18. *U.S. Statutes at Large* 67 (1953): B 132. H. Con. Res. 108, copies in (AUC 935) PMN Papers, and "Federal Indian Legislation and Policies," working paper, Workshop on American Indian Affairs, University of Chicago, Department of Anthropology, Colorado Springs, 1956, 16–19, (AUC 48) PMN Papers, established the policy of terminating "as fast as possible" the special relationship between American Indians and the federal government which had been followed for over a hundred years. Vine Deloria, Jr., *Custer Died for Your Sins*, 54–77. Grattan-Aiello, "Senator Arthur V. Watkins," 281. "This [termination policy] starts the ball rolling on the aim of getting the government out of the Indian Business." Arthur V. Watkins, quoted in "Watkins Vows Continued Congress Effort to Gain Still More Freedoms for Indians," *Deseret News and Telegram* (Salt Lake City), 2

Nov. 1954, 18A. The policy originated in discussions in Congress of the "procedure by which trusteeship over Indian property could be terminated" during 1948–49. William Zimmerman, Jr., Statement, Senate Hearings on National Resources Policy, Interior and Insular Affairs Comm., 4 Feb. 1949, 81st Cong., 1st sess., 322–59, (AUC 51) PMN Papers.

184. Senate Hearings, Interior and Insular Affairs Comm., Termination of Federal Supervision over Certain Tribes of Indians, pts. 1–12, *Joint Hearings on S. 2813, H.R. 2828, and H.R. 7135, Before the Subcom. of the Com. on Interior and Insular Affairs*, 83d Cong., 2d sess., 668–69, 678, (AUC 456) PMN Papers (hereafter cited as Hearings on S. 2813).

185. John S. Boyden, Sr., Deposition, 4 Oct. 1977, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981) 3–4, (AUC 1007) PMN Papers.

186. Bennett, Remarks, 4–5; Metcalf, "Lambs of Sacrifice," 327–28.

187. Ute Termination Act, *U.S. Code*, vol. 25, secs. 677–677aa (1994).

188. Joseph G. Jorgenson, *Sun Dance Religion: Power to the Powerless*, 91. *Ute Tribe v. Utah*, 1125, slip opinion, 90–91; U.S. Dept. of the Interior, Bureau of Indian Affairs, "Stenographic Transcript of Hearings before the Committee on Interior and Insular Affairs, United States Senate, June 9, 1954 (S. 3532—H.R. 9398)," 5 (hereafter cited as "Senate Stenographic Transcript"), BIA Records, no. 45, (AUC 976 and X 2A) PMN Papers.

189. Uintah and Ouray Agency, Utah, Ordinance Defining Indian Blood for Purposes of Future Membership, Fort Duchesne, Utah, 26 July 1950, (AUC 728) PMN Papers.

190. Bennett, Remarks, 2–3.

## CHAPTER 1

1. David Rich Lewis, *Neither Wolf Nor Dog: American Indians, Environment, and Agrarian Change*, 30. The matrilineal system and the descent of the Oran Curry family from Ouray is described at Reed, Interview, tape no. 1, side A, 200/444.

2. John S. Boyden, Letter to David R. Warner, 29 July 1969, (AUC 961) PMN Papers; Stephen G. Boyden, Brief in Support of Agreed Fee [to BIA], 9 Aug. 1972, 9, in John S. Boyden, Papers, Special Collections, Marriott Library, University of Utah, Salt Lake City, Utah, Acct. no. 823, box 51 FDI.

3. *Ute Termination Act, U.S. Code*, vol. 25, sec. 677e (1994).

4. Ibid., secs. 677d, 677o, 677v (1994) ; Stewart L. Udall, Notice, "Ute Indian Tribe of the Uintah and Ouray Reservation, Utah," *Federal Register* 26, no. 165 (26 Aug. 1961): 2208, (B 331) PMN Papers.

5. *Ute Termination Act, U.S. Code*, vol. 25, sec. 677n (1994).

6. *Ute Termination Act, U.S. Code*, vol. 25, secs. 677o, 677v (1994). Stephen G. Boyden, Brief in Support of Agreed Fee, 27, referred to the AUCU as "a rump revival of an association that has divested itself of all title and authority" in 1972.

7. The names of those classified as "mixed-blood" are listed in *Federal Register* 21, no. 66 (5 Apr. 1956): 2208–10, (AUC 59) PMN Papers. Native Civil Rights Project, *Covenant and a Promise*, 28, (AUC 969) PMN Papers, states that the 490 Utes classified as mixed-blood were 93 percent Uintah and consisted of 248 adults and 242 children. Total membership of the Uintah band in 1954, including mixed-bloods, was 785, of which 410, or 52%, were one-half or less of Ute ancestry. Ute Indian Tribe, "Population Figures of the Enrolled Members of the Ute Indian Tribe of Uintah and Ouray Reservation March 1954," (AUC 759) PMN Papers. The final roll of the full-blood group is in *Federal Register 21*, no. 66 (5 Apr. 1956): 2210–12, (AUC 60) PMN Papers, and contains 1,314 names, not differentiated by band.

8. *Ute Termination Act, U.S. Code*, vol. 25, secs. 677, 677d, 677o (1994).

9. Paul Bailey, *Walkara: Hawk of the Mountains*, 169.

10. Feelings of the Utes toward Rex Curry and Francis McKinley are explained at Reed, Interview, tape no. 1, side A, 385/444 and tape no. 1, side B, 375/444; Wanda (Mrs. Elmer) Hackford, Interview by Parker M. Nielson, 23 Oct. 1980, audiocassette, side B, 045–065/260; Preston Allen, Elmer Hackford, and Calvin Hackford, Interview by Parker M. Nielson, 29 June 1980, audiocassette, tape no. 3, side A, 790/890, and side B, 560/890, (AUC 755) PMN Papers. On the very eve of the "share and share alike" meeting in 1950, it was declared:

> We never see you [i.e., Rex Curry] or the men of your Committee among us at any time. You never come to our homes. . . . For your information you do not represent the Uintahs or the Whiterivers. We have our men to take care of our business, and they are not in your committee.
>
> You [i.e., the Tribal Business Committee] are just six men to us who are trying to deprive us of all our Tribal rights, and self-respect which we are taking steps to correct immediately. If you want to fight to keep the Wheeler-Howard Act get out of the Committee and do it as we are, and quit spending our money to exercise your dictatorship over people. Use your own car and your personal funds as we have to do.
>
> Your income for one month is equal or more than any 10 average men on the reservation. You have plenty. Surely you would take the stand that you have to keep your position. You have a good and secure future for yourself, but what about the rest of the people who have no income, no jobs, and no work that can be provided for them. . . .

> We say that the Ute Constitution and By-Laws is a mistake and will not work here on this reservation, and will cause more harm to be done.

Julius Murray, Officially designated spokesman for the Unitah and Whiteriver Bands, "To the Tribal Business Committee of the Ute Tribe, Ft. Duchesne, Utah," 27 Mar. 1950, (AUC 995) PMN Papers.

11. Preston Allen's military experience is described at Allen, Hackford, and Hackford, Interview, tape no. 4, side B, 235/326. Mildred Miles Dillman, *Early History of Duchesne County*, 492, (AUC 970) PMN Papers, describes the World War II military service of the Utes.

12. Ibid.; Colin Murdock, Letter to Secretary of Interior, 18 Aug. 1960, (X 443) PMN Papers.

13. Fred A. Conetah, *A History of the Northern Ute People*, iii.

14. Wanda Hackford, Interview, side B, 030/260.

15. Gary Orfield, "Termination, Destruction and Restoration," 17.

16. Joseph G. Jorgenson, "Functions of Ute Folklore," 33, 51–52, 99, 110.

17. John Wesley Powell, "Life and Culture of the Ute"; Paul R. Sanchez, "Ute Indian Social Progress, Part III."

18. [Elizabeth Bumgarner], Statement to Ute Indian Tribe General Council, 29 Apr.–4 May 1955, 3, (AUC 544) PMN Papers.

19. Fort Duchesne Planning Group, "Report of Education Committee," ca. winter 1953–54, (AUC 783) PMN Papers.

20. Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 350/890.

21. *U.S. Statutes at Large* 52 (1938): 1209–11.

22. *U.S. Statutes at Large* 65 (1951): 3795.

23. Arthur V. Watkins, Letter to Oran Curry, 12 Apr. 1953, (X 396 and AUC 239) PMN Papers; Senate Stenographic Transcript 1–4.

24. The Utes' social/political structure is described at Reed, Interview, tape no. 1, side A, 150–310/444.

25. The $32 million was divided 60 percent to the Ute Indians of the Uintah and Ouray Reservation, Utah ("Northern Utes"), and 40 percent to the Southern Utes of Ute Mountain Reservation in Colorado. Act of 21 Aug. 1951, *U.S. Statutes at Large* 65 (1951): 3795. The Northern Ute share was approximately $17 million net, after deducting fees and expenses. U.S. Senate Committee on Interior and Insular Affairs, *Hearings on S. 1357 and H.R. 3795, 82d Cong., 1st sess.*, 2, (AUC 105 and 459) PMN Papers; U.S. Department of Interior, Bureau of Indian Affairs, "Part One: III. Ute Partition Act of 1954," BIA Records, no. 26, (AUC 976 and X 430A) PMN Papers.

26. "We must recognize and agree that 'termination' as a descriptive term is semantic nonsense. . . . The word is a dishonest word, which confuses ends with means, and conveys no real meaning." John A. Carver, Assistant Secretary of Interior, "Roles and Responsibilities: A Look at the Interior Department's Function in American Indian Affairs," *Indian Affairs*, no. 41 (May 1961): 7, (AUC 533) PMN Papers.

27. Orme Lewis, Letter to Julius Murray, 8 Apr. 1953, (X 395) PMN Papers: Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 430/890.

28. Watkins, Letter to Curry, 12 May 1953, 2; Allen, Hackford, and Hackford, Interview, tape no. 2, side A, 440/890. See also Watkins, Letter to Curry, 18 Feb. 1954, (AUC 49) PMN Papers. Compare Oliver La Farge, President, Association on American Indian Affairs, Letter to Ute Indian Tribe, in Rex Curry, "Radio News, Station KJAM–Vernal, Utah," 23 July 1953, (AUC 828) PMN Papers; BIA, "Part One, The Ute Partition Act," 2. The representations of the Utes at the time of the three–year program are in U.S. Senate, *Hearings on S. 1357 and H.R. 3795*, 30. The Utes obviously contemplated assuming greater responsibility for managing their own resources; there was no mention of ending the special relationship with the United States. Contradicting Watkins's inference that they agreed to do so, Clinton P. Anderson (R.-N.M.) stated that "there are steadily suggestions that the best thing to do is to get completely rid of the Indian service and leave the Indians on their own. I think it is interesting that you [i.e., the Ute Special Delegation] recognize that is not always the wisest policy." Rex Curry responded: "We realize that. We are fearful that what would happen, especially to the land, would be what happened to the 29,000 acres fee-patented on our reservation, which was immediately turned to non-Indians, and out of that 29,000 acres they retain only 127 acres now, over a period of 20 years." Ibid., 14.

29. Curry, "Radio News," 3. See also Fort Duchesne District, Minutes, 1 Dec. 1953, 2, (AUC 637c) PMN Papers; R. Warren Metcalf, "Lambs of Sacrifice: Termination, the Mixed-Blood Utes, and the Problem of Indian Identity," 327–29.

30. Angie DeBoe, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes*, xxiii, 92–125. See also Dorothy Van de Mark, "The Raid on the Reservations," *Harpers Magazine*, (March, 1956): 48–49, for effects of relocation on Ira Hayes, (AUC 993) PMN Papers.

31. *U.S. Statutes at Large* 1 (1787): 51; William A. Brophy and Sophie D. Aberle, *The Indian: America's Unfinished Business*, 17.

32. "These proposals do not have Indian consent. . . . [T]hese proposals, if adopted, will tend to destroy our tribal governments. . . . [T]hey may well leave our older people destitute [and] force our people into a way of life that some of them are not willing or are not ready to adopt." National Congress of American Indians, Resolution, 28 Feb. 1954, (AUC 19) PMN Papers.

33. Ute Tribe's Planning Organization, "Organizational Chart," 2 Feb. 1954, (AUC 480) PMN Papers; Ute Indian Tribe Planning Board, Records, (AUC 637) PMN Papers; Ute Indian Tribe Planning Board, 26 Jan. 1954, tape recording, (AUC 468) PMN Papers; Ute Indian Tribe Planning Board, 26 Jan. 1954, partial transcript, (AUC 992) PMN Papers; Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 360/890.

34. Ute Tribe, Planning Board, 26 Jan. 1954, tape recording, reel no. 1, 730/1800. See also Fort Duchesne District, Minutes, 1 Dec. 1953, p. 6; Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 440/890.

35. U.S. House of Representatives, *Report with Respect to the House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs*, 83d Cong., 2d sess., 1954, H.R. Rep. No. 2680, 7, 12, (AUC 613) PMN Papers.

36. Sen. Edward M. Kennedy (D.-Mass.), "Address before the National Congress of American Indians," 7 Oct. 1969, excerpts 2, (AUC 149) PMN Papers. Cf. Ute Tribe, Planning Board, 26 Jan. 1954, tape recording.

37. Reed, Interview, tape no. 1, side A, 150–170/444.

38. Clyde S. Johnson, Letter to Jim Atwine, 15 Apr. 1955, (AUC 547) PMN Papers. See also Orfield, "Termination," 17.

39. BIA, "Part One, Ute Partition Act," 2–3; U.S. Senate, *Hearings on S. 1357 and H.R. 3795*, 14, 30; Tribal Planning Board, "Long Range Program," 11 Feb. 1954, (AUC 637m) PMN Papers; Tribal Planning Board, "Outline of Proposals: Ten Year Program, Full-Blood Group," 26 Aug. 1954, (AUC 184 and 481) PMN Papers; Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 635/890. Ute Indian Tribe, "Ute Ten Year Development Program," 7, (AUC 541) PMN Papers, acknowledges that the planning board "requests that the reservation lands be continued in trust status for an indefinite period and that the Utes be guaranteed guardianship and special services from the Federal Government." See also Metcalf, "Lambs of Sacrifice," 328–29.

40. BIA, "Part One, The Ute Partition Act," 2–3; Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 550/890; Metcalf, "Lambs of Sacrifice," 330.

41. BIA, "Part One, The Ute Partition Act," 2–3; Robert L. Bennett, Remarks on the Uintah and Ouray Program at Bureau staff meeting, 20 May 1954, BIA Records, no. 79, (AUC 976 and X 430A) PMN Papers. Preston Allen stated that Julius Murray and Francis McKinley attended the National Congress of American Indians convention in Washington, D.C., in 1953 and that they talked with Roger Ernst, assistant secretary of the interior, about McKinley's proposal to "get rid of the mixed-bloods." Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 470/890. See also Metcalf, "Lambs of Sacrifice," 331.

42. Preston V. Allen, Testimony, 27 Nov. 1979, in *Hackford v. First Security Bank*, 91–99, (AUC 1084) PMN Papers; Wanzitzs, Deposition, 13–26; Reed, Interview, tape no. 2, side A, 345/390.

43. Wanzitzs, Deposition, 36–37, 45; U.S. Department of Interior, BIA, "Excerpt from Phoenix Monthly Report for March, 1958," BIA Records, no. 34, (AUC 976) PMN Papers.

44. Wanzitzs, Deposition, 36–37, 45. Reed, Interview, tape no. 1, side A, 340/444, explains that the business committee was influenced and controlled by "outsiders," including Boyden.

45. Senator Watkins stated that "the Department of Justice [reported] that this Uintah group is not included and should not have been included in the distribution" but that "there was an agreement among the Indians . . . with the Uintah group to the effect that the proceeds of claims filed there by the Uintahs as well as the others, would all be divided among the three bands—they would all share together." U.S. Senate, *Hearings on S. 1357 and H.R. 3795*, 71. The share-and-share-alike amendment was then added to satisfy the objections of the Department of Justice. There was no other discussion of the amendment. Stephen G. Boyden, Brief in Support of Agreed Fee, 10, states that the amendment was drafted by John S. Boyden.

46. The office of Superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs, Fort Duchesne, Utah, is sometimes treated as an institution. During this period, the following men held the office:

| | |
|---|---|
| Forrest R. Stone, | July 1, 1944–June 23, 1952 |
| Harry W. Gilmore, | June 6, 1952–November 20,1955 |
| John O. Crow, | November 20, 1955–March 31, 1957 |
| Darrel Fleming, | April 15, 1957–October 1, 1959 |
| Martin M. Zollar, | October 4, 1959–July 31, 1964 |
| Melvin L. Schwartz, | August 9, 1964–January 1, 1967 |

47. Julius Murray, Letter to Arthur V. Watkins [20 Jan. 1953] in copies of letters of protest by Julius Murray and William C. Reed collected at (AUC 107) PMN Papers. Cf. William C. Reed, Letter to Arthur Watkins, Oct. 1952, (AUC 353) PMN Papers; Wm. C. Reed, Letter to Harry Gilmore, 27 May 1953, (AUC 354) PMN Papers; Wm. C. Reed, Letter to A. V. Watkins, 10 June 1953, (AUC 356) PMN Papers; Arthur Watkins, Letter to William C. Reed, 16 June 1953, (AUC 823) PMN Papers. Reed stated that breakup of the Uintah band was necessary to control the tribe, because the Uintahs were dominant; that John Boyden and Rex Curry were responsible for the policy; and that Boyden was motivated to control the reservation for whites and the Mormons. Reed, Interview, tape no. 1, side B, 380–410/444 and, side B, 310, and 367/444.

48. *U.S. Statutes at Large* 65 (1951); 194.

49. Reed, Interview, tape no. 1, side B, 350/444, explains the Ute custom of silence being a vote against; and tape no. 2, side B, 180–203/390, that land is everything and money nothing. Cf. Oliver LaFarge, commenting that among the Hopi opposition was expressed by abstention:

> It is alien to [the Hopis] to settle matters out of hand by majority vote. Such a vote leaves a dissatisfied minority, which makes them very uneasy. Their natural way of doing is to discuss among themselves at great length and group by group until public opinion as a whole has settled overwhelmingly in one direction. . . . In actual practice this system is democratic, but it works differently than ours. Opposition is expressed by abstention. Those who are against something stay away from meetings at which it is to be discussed and generally refuse to vote on it.

Oliver LaFarge, "Notes for Hopi Administrators," 8, as quoted in Indian Law Resource Center, Report [to President Carter] to the Hopi Kikmongwis and other Traditional Hopi Leaders on Docket 196 and the Continuing Threat to Hopi Land and Sovereignty, March 1979, 48, (AUC 835) PMN Papers.

50. Bennett, Remarks, 4–5; Metcalf, "Lambs of Sacrifice," 331.

51. Uintahs and White Rivers [bands] at Fort Duchesne, Minutes, 16 Mar. 1954, (B 5) PMN Papers.

52. Ibid., 4–7; Uncompahgre Band at Randlett, "Resolution," 29 Apr. 1955, 3, (X 404) PMN Papers; BIA, "Part One, The Ute Partition Act," 7–8; "Ute Ten-Year Program," 11–20. At Metcalf, "Lambs of Sacrifice," 332, Bennett is quoted that "he, McKinley and Curry held 'a meeting in a bean field [and] decided that we would present a proposal that would terminate all the mixed-bloods.'"

53. Uintahs and White Rivers, Minutes, 14–16 Mar. 1954, 2, 6. Metcalf, "Lambs of Sacrifice," 334–35, describes the objections in all communities except Ouray, where there was support for the plan as a means to secure a larger share of the $32 million judgment.

54. Ibid., 5.

55. Ibid., 6.

56. Ibid., 5–6.

57. Ibid., 3.

58. See Ute Indian Tribe, Resolution, 31 Mar. 1954, (AUC 25) PMN Papers: "To carry out the purposes of this resolution a committee shall be created [with] responsibility and duty, with the approval of the Tribal Business Committee, of preparing plans for legislation"; Metcalf, "Lambs of Sacrifice," 332–37.

59. Wanzitzs, Deposition, 28–35; Allen, Testimony, 77–78, 105–6; Bennett, Remarks, 4–5. The meeting, including Francis McKinley hiding under the table, Rex Curry calling for a vote, and the Uintahs leaving the meeting and refusing to vote, is described at Reed, Interview, tape no. 2, side A, 316/390; Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 630–684/890.

60. Preston Allen explained that they always understood that Ab Harris spoke for the BIA. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 560/890.

61. Cf. [Ute Indian Tribe, Fort Duchesne, Utah], "Special Joint Business Committee and AUCU Meeting," 23 Oct. 1957, 4–5, (B 29) PMN Papers.

62. "Senate Stenographic Transcript," 35.

63. Ibid., 4.

64. "Senate Stenographic Transcript," 9, 19–20, 26. But see Ute Tribal Planning Board, "Outline of Proposals," 1, stating that "some of these developments which appear harsh and uncomfortable have been too much for some original members of the Program Committee, and upon disagreement with these hard facts of life, they have quit the Committee rather than stay and fight for their beliefs."

65. Ute Indian Tribe, "Memorandum to Ute Indians," 12 July 1954, (X 398 and AUC 122) PMN Papers.

66. Jim Atwine, who was chief of the Uintahs, said that they would not vote on the termination resolution and the Uintahs walked out of the meeting. Reed, Interview, tape no. 1, side A, 150, 170/444, side B, 335/444; Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 630–684/890.

67. *Hearings on S. 2813*, 668–69, 678.

68. Ibid., 664, 666–67, 673.

69. "Senate Stenographic Transcript," 42–43.

70. Compare, Uintahs and Whiterivers, Minutes, 14–16 Mar. 4–7; Uncompahgre Band at Randlett, "Resolution," 29 Apr. 1955.

71. Preston Allen explained that the business committee appointed the Special Delegation and that they threw his work on the planning committee "out the window." Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 610/890.

72. Della Curry, Letter to Secretary of Interior, 25 July 1961, BIA Records, no. 5, (AUC 976 and X 412) PMN Papers. Preston Allen explained that if the Indians think they will get some money they will appear to agree to anything. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 880/880.

73. Oran Curry, Letter to Secretary of Interior, 30 July 1961, BIA Records, no. 4, (AUC 976 and X 411) PMN Papers.

74. E.g., Max Chapoose, Letter to President [of the United States], 21 Mar. 1958, BIA Records, no. 38, (AUC 976 and B 43) PMN Papers; Petition, full-blood members of the Uintah and Ouray Reservation, 27 May 1957, (B 44) PMN Papers.

## CHAPTER 2

1. Letter to O. H. Lipps, in "Data-Property of Ute Delegation," March 1945, 10(b), (AUC 545) PMN Papers.

2. Ute Indian Tribe, "Ute Ten Year Development Program," 24, (AUC 541) PMN Papers; Wilson Rockwell, *The Utes: A Forgotten People*, 258; Gottfried O. Lang, "A Study in Culture Contrast and Culture Change: The Whiterock Utes in Transition," 32–38.

3. Ute Indian living conditions and Preston Allen's construction of his home are described at Wanda (Mrs. Elmer) Hackford, Interview by Parker M. Nielson, 23 0ct. 1980, audiocassette, side A, 085–195/260, (AUC 755) PMN Papers.

4. Ute Indian Tribe, "Ten Year Program," 2.

5. Ibid., 22–24; Preston Allen, Letter to Superintendent Harry Gilmore, 16 Jan. 1952, (AUC 829) PMN Papers; Lang, "A Study in Culture Contrast," 45.

6. Ute Indian Tribe, "Ten Year Program," 83, 130.

7. Ute Indian Tribe, "Grant of Standard Land Assignment," 12 July 1948, (AUC 776) PMN Papers.

8. *Ute Termination Act, U.S. Code*, vol. 25, secs. 677a, 677v (1994).

9. *Hearings on S. 2813*, 636.

10. *Ute Termination Act, U.S. Code*, vol. 25, secs. 677g, 677n, 677m (1994).

11. "Former Council Member Blasts Tribal Foes," *Vernal Express*, 27 Apr. 1950, 14, (AUC 830) PMN Papers.

12. *Ute Termination Act, U.S. Code*, vol. 25, sec. 677d (1994).

13. Ibid., sec. 677w (1994).

14. Jane A. Redfoot (and more than 200 others), "To Whom It May Concern," ca. 1954, (X 401) PMN Papers; John Pawwinnee (and 12 others), "Resolution," 29 Apr. 1955, (X 404) PMN Papers.

15. Joseph A. Workman, Letter to Glenn Emmons, 28 Jan. 1955, (X 456) PMN Papers.

16. Pawwinnee, "Resolution," 3.

17. Ibid., 2–4.

18. Ibid., 5; Robert L. Bennett, Remarks on the Uintah and Ouray Program at Bureau staff meeting, 20 May 1954, 2–4, BIA Records, no. 79, (AUC 976 and X 457) PMN Papers; "Senate Stenographic Transcript," 42; Preston Allen, Elmer Hackford, and Calvin Hackford, Interview by Parker M. Nielson, 29 June 1980, audiocassette, no. 3, side A, 470 and 550/890, (AUC 755) PMN Papers.

19. Pawwinnee, "Resolution," 2. John Pawwinnee was the latest of the Uncompahgre chiefs. William C. Reed, Interview by Parker M. Nielson, 1 Sept. 1973, audiocassette, no. 1, side A, 255, 310/444. Francis McKinley was never accepted as an Uncompahgre leader. Reed, Interview, no. 1, side B, 375/444.

20. *Hearings on S. 2813*, 584, 608–9.

21. Sen. Arthur V. Watkins, Letter to Oran Curry, 12 May 1953, (X 396) PMN Papers.

22. See R. Warren Metcalf, "Lambs of Sacrifice: Termination, the Mixed-Blood Utes, and the Problem of Indian Identity," 329.

23. The attitude "We had no alternative, so just be as helpful in it as we could, to get what was rightfully ours" is expressed by Preston Allen at Allen, Hackford, and Hackford, Interview, audiocassette, no. 4, side B, 176/326.

24. [Albert Harris], "Proposed Mixed Blood Plans for Discussion," 14 Sept. 1954, (AUC 630) PMN Papers; Mixed Blood Meeting, Minutes, 28 Apr. 1955, (AUC 913) PMN Papers; Preston V. Allen, Deposition, 22 Apr. 1977, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 21–22, (AUC 1001) PMN Papers; Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 080/890.

25. *Ute Termination Act, U.S. Code*, vol. 25, sec. 677e (1994).

26. AUCU, Minutes, 28 Apr. 1955, (X 75) PMN Papers. Cf. "Senate Stenographic Transcript," 42–43. Preston Allen said, "We were getting conned right and left," at Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 060/890.

27. *Hearings on S. 2813*, 584, 608–9; Allen, Hackford, and Hackford, Interview, audiocassette, no. 3, side B, 875/880.

28. Ute Indian Tribe Planning Board, 26 Jan. 1954, tape recording, (AUC 468) PMN Papers.

29. Whiterocks Community, Minutes, 29 Apr. 1955, 2, (AUC 542) PMN Papers.

30. William C. Reed, Letter to Sen. James E. Murray, 21 Apr. 1955, (AUC 107) PMN Papers.

31. [Elizabeth Bumgarner], prepared statement at General Council, 29 Apr.–4 May 1955, (AUC 544) PMN Papers.

32. Whiterocks Community, Minutes, 29 Apr. 1955, 3; Preston V. Allen, Deposition.

33. Clyde S. Johnson, Letter to Jim Atwine, 15 Apr. 1955, (AUC 547) PMN Papers.

34. Whiterocks Community, Minutes, 29 Apr. 1955. Cf. Ute Indian Tribe, "Ten Year Program," 39–40.

35. Prepared statement; Richard Curry and Merle Kelly, "Motions made at General Council," 30 Apr., 3 and 4 May, 1955, (AUC 361) PMN Papers.

36. Randlett Community, Minutes, 24 May 1955, 3, (AUC 178) PMN Papers.

37. Julius Murray, tape-recorded telephone conversation with Parker M. Nielson, 31 Oct. 1980, 070–090/660, (AUC 755) PMN Papers.

38. Prepared statement; Curry and Kelly, "Motions." See also, BIA, "Excerpt from Phoenix Monthly Report for March, 1958," BIA Records, no. 34, (AUC 976) PMN Papers; Max Chapoose, Letter to President [of the United States], 21 Mar. 1958, BIA Records, no. 38, (AUC 976) PMN Papers; Roger Ernst, Assistant Secretary of Interior, Letter to Max Chapoose, 18 Apr. 1958, 5, BIA Records, no. 37, (AUC 976) PMN

Papers. The full-bloods also "den[ied] that this Mr. Boyden is representing us." J. Twohy [and 20 others], Letter to Glenn L. Emmons, 31 May 1957, BIA Records, no. 43, (AUC 976) PMN Papers.

39. Curry and Kelly, "Motions."

40. Ute Indian Tribe, "Ten Year Program," 36.

41. *Ute Termination Act, U.S. Code*, vol. 25, sec. 677w (1994).

42. Ute Indian Tribe, "Ten Year Program," 6–7, 31, 35.

43. Ibid., 35, 36.

44. Bennett, Remarks, 4. Francis McKinley was never accepted as a leader of the Uncompahgres. Reed, Interview, tape no. 1, side B, 375/444.

45. Ute Indian Tribe, "Ten Year Program," 35.

46. Ibid., 38.

47. W. Barton Greenwood, Letter to Chairman of Mixed-blood Group, 5 Aug. 1955, BIA Records, no. 25, (AUC 976 and X 430) PMN Papers.

48. Bennett, Remarks, 4. The letter is described at Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 685–730/890, and Preston Allen speculated that Ab Harris was the person referred to as "chairman." Allen said that there was no mixed-blood planning board but that there was a legislative planning board, with Ab Harris chairman and himself vice-chairman, that was supposed to make recommendations for legislation. See Mixed-Blood Planning Board, Letter "To the Mixed-Blood Members of the Ute Indian Tribe," 5 July 1955, (AUC 93) PMN Papers.

49. Prepared statement.

50. Allen, Hackford, and Hackford, Interview, tape no. 4, side A, 235/326.

51. Ute Indian Tribe Planning Board, Records, 5 Dec. 1953 and 5 Feb. 1954, (AUC 637) PMN Papers.

52. *Federal Register* 21, no. 66 (5 Apr. 1956): 2208, copy in (AUC 59) PMN Papers; Glenn L. Emmons, Letter to John O. Crow, 5 Apr. 1956, (X 3) PMN Papers.

53. Secretary of the Interior, *Report by the Task Force on Indian Affairs*, 10 July 1961, 5, 16, 18, (AUC 62) PMN Papers.

54. Bill Reed, Elmer Hackford, Art Workman, Albert Daniels, Jr., and Preston Allen, "*Attention* To All Mixed Blood Eligible Voters," ca. April 1956, (AUC 574) PMN Papers.

55. Constitution and Bylaws of the Affiliated Ute Citizens of the State of Utah, 12 May 1956, (X 3A) PMN Papers. Preston Allen was elected president in 1957, and the office was held at various times by Lula Murdock and Elmer Hackford. Preston Allen, Testimony, 26 Nov. 1979, in *Hackford v. First Security Bank*, 67–70, (AUC 1084) PMN Papers. For convenience, and because Allen was president during the time of the events described, he is treated as president throughout.

56. John S. Boyden, Sr., Deposition, 4 Oct. 1977, in *Hackford v. First Security Bank*, 6, (AUC 1007) PMN Papers.

57. Allen, Testimony, 114, 117–19, 124, 126; Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 650/890.

58. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 292/890: Ute Indian Tribe, "Ten Year Program," 39.

59. "Sen. Kennedy Assails U.S. Indian Policies," *Washington Post*, 29 June 1980, (AUC 146) PMN Papers; Department of Interior, "Remarks by Commissioner of Indian Affairs Louis R. Bruce at a Dinner Meeting of Western Oklahoma Indian Leaders, Oklahoma City, Okla.," 24 Oct. 1969, (AUC 236) PMN Papers.

60. Retainer Agreement, 13 Feb. 1960, (X 390) PMN Papers.

61. Carl J. Cornelius, memorandum to files, "Uintah & Ouray Meeting of October 22, 1956, Division of Assets and Planning," 23 Nov. 1956, 3, BIA Records, no. 73, (AUC 976 and X 453) PMN Papers; BIA, "Excerpt from Phoenix Monthly Report."

62. Sen. Arthur V. Watkins, Letter to Joseph A. Workman, 2 Feb. 1955, (AUC 43) PMN Papers.

63. Cornelius, "Uintah and Ouray Meeting of October 22, 1956," 3.

64. *Ute Termination Act, U.S. Code*, vol. 25, sec. 677f (1994).

65. Cornelius, "Uintah and Ouray Meeting of October 22, 1956," 3.

## CHAPTER 3

1. Preston Allen, Testimony, 26 Nov. 1979, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 126–27, (AUC 1084) PMN Papers; Preston Allen, Elmer Hackford, and Calvin Hackford, Interview by Parker M. Nielson, 29 June 1980, audiocassette, tape no. 3, side B, 130/890, (AUC 755) PMN Papers.

2. William Reed, Letter to Sen. Hugh Butler, 5 June 1973, in copies of letters of protest by Julius Murray and Bill Reed, (AUC 107) PMN Papers; Allen, Hackford, and Hackford, Interview, tape no. 4, side B, 261/326.

3. Allen, Hackford, and Hackford, Interview, tape no. 4, side B, 320/326.

4. Ibid., tape no. 3, side A, 730/890; AUCU, Minutes, 14 July 1956, (X 75) PMN Papers.

5. Mixed Blood Planning Board, Minutes, 28 Apr. 1955, (AUC 913) PMN Papers.

6. "Senate Stenographic Transcript," 43.

7. Mixed-Blood Group, "Plan for Distribution of the Assets of the Individual Mixed-blood Members of the Ute Indian Tribe, Uintah and Ouray Reservation, Utah," (X 20) PMN Papers (hereafter cited as "Plan for Distribution"). The plan was prepared by Boyden. Allen, Testimony, 138–39. That the mixed-bloods would support any proposal if they thought they would be given money, see Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 880/890.

8. *Ute Termination Act, U.S. Code*, vol. 25, sec. 677*l* (1994).

9. For a detailed account of these practices, see Ute Indian Tribe, "Ute Ten Year Development Program," 29–41, (AUC 541) PMN Papers.

10. "Plan for Distribution," 9.

11. AUCU, Minutes, 6 Sept. 1956; *Ute Termination Act, U.S. Code*, vol. 25, sec. 677*l* (1994).

12. George W. Mathis, Letter to Chief, Branch of Realty, 3 Aug. 1956, 1, BIA Records, no. 75, (AUC 976 and X 455) PMN Papers.

13. AUCU, Minutes, 6 Sept. 1956.

14. Julius Towhy and 60 other Ute Indians, Letter to Glenn L. Emmons, 7 Dec. 1956, BIA Records, no. 71, (AUC 976 and 265) PMN Papers.

15. John S. Boyden, Sr., Deposition, 4 Oct. 1977, in *Hackford v. First Security Bank*, 10, (AUC 1007) PMN Papers.

16. Preston V. Allen, Deposition, 22 Apr. 1977, in *Hackford v. First Security Bank*, 22, (AUC 1001) PMN Papers. Preston Allen stated that the only planning board was the tribal planning board, which he chaired, and that there was never a mixed-blood planning board; but that there was a legislative committee, of which Ab Harris was chairman and he vice-chairman. The legislative committee was supposed to help Boyden draft the termination legislation, but its proposals were submitted to Boyden for review and drafting and were never returned; and the legislative committee never approved any termination legislation. Allen, Hackford, and Hackford, Interview, tape no. 3, side A, 840–880/890. Cf. Darrell Fleming, Superintendent, "Minutes of the Meeting Held on January 3rd [1958], 1:30 P.M. in the Superintendent's Office," (AUC 905) PMN Papers, "for the purpose of organizing or appointing committees into working units" and appointing Preston Allen to the "Committee on Human Resources."

17. Ute Indian Tribe, "Ten Year Program," 65.

18. Allen, Deposition, 23. Cf. [Affiliated Ute Citizens], Proposed Plans nos. I, II, III and IV, (AUC 955) PMN Papers.

19. Carl J. Cornelius, memorandum to files, "Meeting of October 23, 1956, Uintah & Ouray, Division of Assets," 23 Nov. 1956, BIA Records, no. 73, (AUC 976) PMN Papers; George S. Kephart, Chief, Branch of Forestry, Memorandum to Branch of Tribal Programs, 30 Oct. 1956, BIA Records, no. 74, (AUC 976) PMN Papers.

20. Uintah and Ouray Agency, Resolution no. 57–74, 25 Apr. 1977, (X 7) PMN Papers.

21. Ute Indian Tribe, "Ute Ten Year Program," 82; Extension Division, University of Utah, "Final Report of the Bureau of Indian Services," July 1961, BIA Records, no. 5, (AUC 976 and X 413) PMN Papers.

22. Allen, Deposition, 24; Allen, Testimony, 144–45. Documents relating to the division of assets are at (AUC 2) PMN Papers.

23. Darrell Fleming, Letter to Commissioner of Indian Affairs, 7 June 1957, (X 9A) PMN Papers.

24. Allen, Deposition, 25; Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 405/890.

25. Boyden, Deposition, 7–8. See also John S. Boyden, Letter to David R. Warner, 29 July 1969, 5–6, (AUC 961) PMN Papers.

26. F. M. Haverland, Letter to Commissioner, 29 Apr. 1957, (X 9) PMN Papers.

27. Uintah and Ouray Indian Reservation Utah, "Range Unit Boundaries 1954," (X 5 and 6) PMN Papers; Uintah and Ouray Agency, Resolution, 25 Apr. 1957; Uintah and Ouray Agency, "Resolution," 18 May 1957, (X 8) PMN Papers. Details of the division are in Harry L. Stevens, Letter to Commissioner, 10 Feb. 1958, BIA Records, no. 29, (AUC 976) PMN Papers.

28. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 495/890.

29. [Ute Indian Tribe, Fort Duchesne, Utah], "Special Joint Business Committee and AUCU Meeting," 23 Oct. 1957, 1–3, (B 29) PMN Papers.

30. Ute Indian Tribe, "Special Joint Meeting," 3; Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 214/890.

31. "Special Joint Meeting," 3–5.

32. Mathis, Letter to Chief, Branch of Realty, 2.

33. Cornelius, memorandum to files.

34. "Special Joint Meeting," 4–5; Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 222/890.

35. Cornelius, memorandum to files.

36. "Special Joint Meeting," 4–5.

37. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 384/890.

38. Darrell Fleming, Letter to F. M. Haverland, 12 May 1958; Max Chapoose, Letter to President [of the United States], 21 Mar. 1958, BIA Records, no. 38, (AUC 976) PMN Papers. Uintah and Ouray Agency, Resolution no. 58–54, 24 Mar. 1958, (AUC 147) PMN Papers, states that "a petition is being circulated by some members of the Tribe which asks, among other things, the abolishment of Public Law 671 and the Wheeler-Howard Act, the resignation of certain Tribal employees and a Senatorial investigation."

## CHAPTER 4

1. AUCU, "Proposed Budget for Fiscal Year 1958," (AUC 68 and 69) PMN Papers.

2. Preston Allen, Elmer Hackford, and Calvin Hackford, Interview by Parker M. Nielson, 29 June 1980, audiocassette, tape no. 3, side B, 140/890, (AUC 755) PMN Papers.

3. Ada C. Burdeau, Letter to Area Director, 3 Dec. 1956, BIA Records, no. 16, (AUC 976) PMN Papers. The tribe maintained a revolving credit fund for loans to its members for purchase of livestock, equipment, homes, accounts at local stores, or other purposes, secured by the individual's per capita distributions or liens on the items purchased. Burdeau's report indicates that in 1956 there were 145 loan contracts involving 127 mixed-bloods, with an outstanding balance of $744,202.57, of which 13 percent, or $99,598.96, was delinquent, and that inadequate security, failure to insure or maintain acquired property, or transfer of acquired property without proper releases was frequent.

4. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 805/890.

5. Ibid., 005/890. According to Preston Allen, their attitude was "get lost."

6. John S. Boyden, Statement, 8 July 1968, in *Reyos v. First Security Bank*, 431 F2d 1337 (10th Cir 1970), *reversed sub. nom.*, *Affiliated Ute Citizens v. United States*, 406 US 128 (1972), Appendix, 562–63 (AUC 972) PMN Papers.

7. Allen, Hackford, and Hackford, Interview, tape no. 4, side A, 150, 235/326; tape no. 3, side B, 785/890.

8. Ben Weberman, "Letting George Do It," *Forbes*, 7 July 1980, 49.

9. Ibid.

10. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 725/890.

11. Ibid. Harris was hired by the AUCU, but because he acted without the authority of the AUCU board, Preston Allen said they "turned him loose" for about 2 years. Ibid., tape no. 3, side A, 790/890.

12. George S. Eccles, Letter to John Crow, 20 Feb. 1956, BIA Records, no. 76, (AUC 976 and X 458) PMN Papers. Boyden's connection with government officials, BIA officials in particular, is explained at Stephen G. Boyden, Brief in Support of Agreed Fee [to BIA], 9 Aug. 1972, 6–9, in John S. Boyden, Papers, Special Collections, Marriott Library, University of Utah, Salt Lake City, Utah, Acct. no. 823, Box 51 FDI, listing pertinent highlights of the career of John S. Boyden, including that he was "loaned" to the Justice Department and the Department of Interior in 1942 at the request of BIA Commissioner John Collier, who arranged for Boyden to be legal adviser for the superintendents of the BIA until he was appointed counsel for the Ute Indian Tribe for the Uintah and Ouray Agency, Utah, 15 Nov. 1946.

13. "Senate Stenographic Transcript," 14; Ute Indian Tribe, "A Progress Report of the Ute Delegation in Washington, D.C.," (AUC 312) PMN Papers; Ute Tribal Office, Memorandum to Ute Indians, 12 July 1954, (AUC 364) PMN Papers. See also Sen. George W. Malone (R.-Nev.), speaking for S.2167, 82d Cong., 1st sess., *Cong. Rec.* 97, pt. 9:11911-30 (22 Sept. 1951), proposing to remove guardianship over Indians and repeal the Wheeler-Howard Act.

14. 100 *Cong. Rec.*, 83d Cong., 2d sess., 1954, 6253, pt. 9:6253, (AUC 554) PMN Papers: Will Fehr, "Watkins Vows Continued Congress Effort to Gain Still More Freedoms for Indians," *Deseret News and Telegram* (Salt Lake City), 2 Nov. 1954, A18, (AUC 757) PMN Papers.

15. George Eccles, Letter to Glenn Emmons, 22 Dec. 1955, (X 354) PMN Papers; Glenn L. Emmons, Letter to George S. Eccles, 4 Jan. 1956, (B 12) PMN Papers.

16. George Eccles, Letter to Glenn Emmons, 16 Jan. 1956, BIA Records, no. 77, (AUC 976 and X 459) PMN Papers.

17. Eccles, Letter to Crow.

18. Wesley Dickerson, Letter to Glenn Emmons, 28 Oct. 1957, (X 440) PMN Papers.

19. Eccles, Letter to Crow; Eccles, Letter to Emmons, 16 Jan. 1956.

20. Wilbur Kane, Letter to Darrell Fleming, 4 Nov. 1957: C. J. Oppegard, Letter to D. Otis Beasley, 31 Oct. 1957; Fred H. Massey, Letter to Frederick M. Haverland, 27 Nov. 1957, BIA Records, nos. 40, 42, (AUC 976) PMN Papers; Agreement between United States of America and First Security Bank of Utah, 10 Jan. 1958, BIA Records, no. 35, (AUC 976, X 439, and X 441) PMN Papers.

21. Massey, Letter to Haverland.

22. Ralph D. Cowan, Letter to A. H. Harris, 1 Jan. 1958, (B 37) PMN Papers.

23. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 805/890.

24. Ralph Cowan, Letter to A. H. Harris, 16 Jan. 1958, (X 85) PMN Papers; Ralph Cowan, Letter to A. H. Harris, 16 Jan. 1958, (X 86) PMN Papers; John S. Boyden, Papers, Special Collections, Marriott Library, University of Utah, Salt Lake City, Utah, Acct. no. 823, Day Planner, 1 Jan. 1958.

25. Cowan, Letter to Harris, 16 Jan. 1958, (X 85) PMN Papers.

26. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 680–850/890; Preston Allen, Testimony, 26 Nov. 1979, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 190–91, (AUC 1084) PMN Papers.

27. Cowan, Letter to Harris, 16 Jan. 1958, (X 85) PMN Papers.

28. Ibid.

29. Ibid., 2.

30. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 770/890.

31. Antelope Sheep Range Company, Bylaws, (X 87) PMN Papers; Rock Creek Cattle Range Company, Bylaws, (X 87A) PMN Papers; Ute Distribution Corporation, Resolution, 12 Jan. 1959, (X 88) PMN Papers.

32. Calvin Hackford, conversation with author, Oct. 1979; AUCU, Minutes of General Membership Meeting, 1 Nov. 1958, 1–2, (X 429) PMN Papers.

33. AUCU, Notice of Meeting, 4 Aug. 1958, in AUCU, Minutes, (X 75) PMN Papers.

34. AUCU, Minutes, 1 Nov. 1958.

35. Rock Creek Cattle Range Company and Antelope Sheep Range Company, Informational Release, 16 May 1962, (X 302) PMN Papers.

36. Ralph Cowan, Letter to A. H. Harris, 16 Nov. 1958, (X 307) PMN Papers.

37. Leonard Jacob, Letter to Darrell Fleming, 21 Aug. 1959, (X 312) PMN Papers.

38. Allen, Testimony, 148–51.

39. Ibid., 255–56.

40. Affiliated Ute Indian Trust Agreement, 26 July 1960, (X 98) PMN Papers.

## CHAPTER 5

1. University of Utah, Extension Division, "Final Report of the Bureau of Indian Services," July 1961, BIA Records, no. 4, (AUC 976) PMN Papers; University of Utah, Extension Division, "Interim Report for the Indian Rehabilitation Program of the Bureau of Indian Services, 1 July 1957 to 31 December 1957," (AUC 981) PMN Papers.

2. *Ute Termination Act, U.S. Code*, vol. 25, secs. 677n, 677o, 677v (1994).

3. "The repeated assertions at hearings on the termination acts that Indians are ready for termination are all belied by the provisions of the acts themselves, which invariably set up the safeguards usually provided for persons needing guardians." William A. Brophy and Sophie D. Aberle, *The Indian: America's Unfinished Business*, 191.

4. Homer B. Jenkins, Memorandum, "Status of Transactions relating to Division of Assets between the Indians of the Uintah and Ouray Reservation," 24 July 1959, BIA Records, no. 44, (AUC 976) PMN Papers, states that "the Agency is proceeding with the compilation of case files on all mixed-blood families which will be available for future reference by state and county."

5. *Affiliated Ute Citizens v. United States*, 406 US 128 (1972), Appendix 486–87, (AUC 972) PMN Papers.

6. "I myself for the period of five years or more have had every means of assistance taken from me by having my percapta's [*sic*] taken from me . . . still in time of distress lack of sufficient funds to meet our most urgent needs such as light bills, grocery, doctor bills and various other necessities we are denied every right to live. And just to what extent has a single person such as a so called superintendent or advisor has authority to withhold an individual's last dime and leave him with not one thing to live on." Marguerite Murray Hendricks, Letter to Rep. Henry Aldous Dixon (R.-Utah), 25 Mar. 1957, BIA Records, no. 32, (AUC 976 and X 434A) PMN Papers. Cf. Whiterocks Community of Whiteriver and Uintah Indians, Minutes, 14 Mar. 1945, 4, (AUC 546) PMN Papers: "James Redcap Appowora stated . . . in one case, money for water charges was being taken from an old lady who did not have enough to eat."

7. *Affiliated Ute Citizens v. United States*, Appendix 486.

8. Hendricks to Dixon; Marguerite Murray Hendricks, Letter to Glenn L. Emmons, Commissioner of Indian Affairs, 3 Apr. 1959, (X 451B) PMN Papers; Hendricks, Letter to Roger Ernst, Assistant Secretary of Interior, 5 Feb. 1955, (X 451D) PMN Papers.

9. *Affiliated Ute Citizens v. United States*, Appendix 487.

10. Roger Ernst, Letter to Miss. Murray, 11 Mar. 1959, BIA Records, no. 68, (AUC 976) PMN Papers.

11. See comments of Arthur V. Watkins at *Hearings on S. 2813*, 678: "Here we have a group of people who have innate ability just the same as other people, when they get stimulated with a little ambition and necessity." Cf. Vine Deloria, Jr., and Sen. Ben Nighthorse Campbell (R.-Colo), quoted at note 20.

12. William C. Reed, Interview by Parker M. Nielson, 1 Sept. 1973, audiocassette, tape no. 2, side A, 387–400/390, side B, 275–300/390, (AUC 755) PMN Papers.

13. *Affiliated Ute Citizens v. United States*, Appendix 130–46, 484–86.

14. Reed, Interview, tape no. 1, side A, 260/444, states that Melvin Reed was descended from "Uncle Henry" Harris and Mary Harris, who were adopted into the tribe in 1897. Mary Harris was the daughter of Jim Reed, one of the founders of the Reed Trading Post, and the Ute-Shoshone woman Reed married in Wyoming and brought to the Uintah Valley in 1878. Mildred Miles Dillman, *Early History of Duchesne County*, 68–70, copy in (AUC 969) PMN Papers.

15. Melvin Reed, Deposition, 10 Aug. 1967, in *Reyos v. First Security Bank*, 431 F2d 1337 (10th Cir 1970), *reversed sub. nom.*, *Affiliated Ute Citizens v. United States*, 406 US 128 (1972), 43, (AUC 1066) PMN Papers.

16. BIA, "Excerpt from Phoenix Monthly Report for March, 1958," BIA Records, no. 34, (AUC 976) PMN Papers, states that "some members feel that grazing areas divided to the mixed-bloods should not be set up in state corporations and divided by stock certificates."

17. David Rich Lewis, *Neither Wolf Nor Dog: American Indians, Environment, and Agrarian Change*, 22–25. See also Fred A. Conetah, *A History of Northern Ute People*, 2.

18. See, for example, Whiterocks Community, Minutes, 14 Mar. 1945, 4: "Happy Jack raised the question as to why they should be charged for water, that he believed it was water provided by the creator intended for use of the Indians and should not be charged for in money."

19. Reed, Interview, tape no. 2, side A, 415–452/390.

20. Cf., Vine Deloria, Jr., *Custer Died for Your Sins: An Indian Manifesto*, 9: "The white man preached that it was good to help the poor, yet he did nothing to assist the poor in his society. Instead he put constant pressure on the Indian people to hoard their worldly goods, and when they failed to accumulate capital but freely gave to the poor,

the white man reacted violently." See also Wallace Terry, "Success Isn't What You Have—It's What You've Given Away," *Standard Examiner* (Ogden), 2 June 1996, *Parade Magazine* 17, quoting Sen. Ben Nighthorse Campbell (R.-Colo.): "But to Indians, it is the other way around: Success isn't what you have, it's what you've given away. The most revered member of the tribe may be the poorest, because giving away increases your stature." See also William Dame, "The American Indian: Why Isn't He Rioting?" *Deseret News* (Salt Lake City), 14 Apr. 1969, A17, (AUC 84) PMN Papers; Reed, Interview, tape no. 2, side A, 400/390, side B, 275–300/390.

21. *Affiliated Ute Citizens v. United States*, Appendix 476.

22. *Hearings on S. 2813*, 668–69. Cf. Spencer W. Kimball, Council of the Twelve, L.D.S. Church, in Will Fehr, "Watkins Vows Continued Congress Effort to Gain Still More Freedoms for Indians," *Deseret News and Telegram* (Salt Lake City), 2 Nov. 1954, A18, (AUC 757): "Freedom would be a great hardship for some Indians for awhile, but gradually they would get on their feet. They would gradually reach the point to where they would be independent. . . . If you don't have to work, you won't work."

23. Scott Savage, Letter to Parker Nielson, "Interview with Acting Superintendent Cole and Mr. Emmons of the Ouray & Uinta [*sic*] Agency [concerning Joyce Thompson trust funds]," 16 Dec. 1971, (AUC 836) PMN Papers.

24. Sgt. Keith Hooper, Utah Highway Patrol, "Investigating Officer's Report of Traffic Accident," 28 Mar. 1972, and Parker M. Nielson, notes of interview with Duchesne County Sheriff George Merritt, (AUC 837) PMN Papers.

25. "Order Granting Authority to Compromise and Settle Claim and Receive Funds Therefrom, in the Matter of the Estate of Albert Harding Harris," Third District Court, Salt Lake County, State of Utah, Probate no. 60144, 2 Oct. 1974, (AUC 979) PMN Papers.

26. Parker M. Nielson, Letter to Scott C. Pugsley, 18 Jan. 1974, (AUC 979) PMN Papers.

27. Maxie Chapoose, Letter to Adam M. Duncan, 16 Feb. 1968, (AUC 978) PMN Papers.

28. Max Chapoose, Letter to Mr. President, 3 Mar. 1958, with unsigned petition attached, BIA Records, no. 38, (AUC 976) PMN Papers.

29. Roger Ernst, Letter to Max Chapoose, 18 Apr. 1958, 4–5, BIA Records, no. 37, (AUC 976) PMN Papers.

30. Ralph R. Reeser, Letter to Adam M. Duncan, 24 July 1968, (AUC 978) PMN Papers.

31. Association on American Indian Affairs, Inc., "An American Indian Point 4 Program," [1956] 2, (AUC 934) PMN Papers: "The few tribes that have been allowed to create or carry on their own programs have shown wisdom, initiative and ability to retain their assets."

32. Meriam Report, 40–41.

33. DeBoe, *And Still the Waters Run*, xxiii; Gary Orfield, "Termination, Destruction and Restoration," 16, (AUC 967) PMN Papers. The platforms of both major political parties in 1960, calling for rejection of termination, are quoted at Association on American Indian Affairs, Inc., "An American Indian Point 4 Program."

34. Senate, "Senator George W. Malone of Nevada speaking for S. 2167," 82d Cong. 1st sess., 1951, 97 *Cong. Rec.*, pt. 9:11911, (AUC 45) PMN Papers.

35. Boyden's awareness of the Meriam Report is implicit in Stephen G. Boyden, Brief in support of Agreed Fee [to BIA], 9 Aug. 1972, 6–9, in John S. Boyden, Papers, Special Collections, Marriott Library, University of Utah, Salt Lake City, Utah, Acct. no. 823, box 51 FDI, listing pertinent highlights of the career of John S. Boyden, including that he was "loaned" to the Justice Department and the Department of Interior in 1942 at the request of BIA Commissioner John Collier, who arranged for Boyden to be legal adviser for the superintendents of the BIA until he was appointed counsel for the Ute Indian Tribe for the Uintah and Ouray Agency, Utah, 15 Nov. 1946, and that he drafted the 1948 legislation adding the Uncompahgre extension to the reservation implementing one of the recommendations of the Meriam Report.

## CHAPTER 6

1. President, Proclamation, 14 July 1905, in Mildred Miles Dillman, *Early History of Duchesne County*, 90–94, (AUC 970) PMN Papers.

2. Richard N. Hackford [brother of Elmer Hackford], Deposition, 19 April 1977, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 29, (AUC 1028) PMN Papers.

3. *Ute Termination Act, U.S. Code*, vol. 25, secs. 677*l*, 677n, 677o (1994).

4. Calvin C. Hackford, Deposition, 3 May 1977, in *Hackford v. First Security Bank*, 33, (AUC 1025) PMN Papers; Preston V. Allen, Deposition, 22 Apr. 1977, in ibid., 10, (AUC 1001) PMN Papers; Elmer Hackford, Deposition, 7 Apr. 1977, in Ibid., 20–21, (AUC 1026) PMN Papers; Preston Allen, Testimony, 26 Nov. 1979, in ibid., 142, (AUC 1084) PMN Papers.

5. Richard Hackford, Deposition, 18; Preston Allen, Elmer Hackford, and Calvin Hackford, Interview by Parker M. Nielson, 29 June 1980, audiocassette, tape no. 3, side B, 130/880, (AUC 755) PMN Papers.

6. *Ute Termination Act, U.S. Code*, vol. 25, secs. 677n, 677o (1994).

7. Joseph A. Workman, Letter to John S. Boyden, 6 Jan. 1959, (X 347) PMN Papers; AUCU, Minutes, 5 Jan. 1959, (X 75) PMN Papers.

8. AUCU, Minutes, 1 Jan. 1959.

9. John S. Boyden, Letter to Joseph A. Workman, 9 Jan. 1959, (X 381) PMN Papers.

10. Richard Hackford, Deposition, 9, 18.

11. Boyden, Letter to Workman, 9 Jan. 1959.

12. Workman, Letter to Boyden, 6 Jan. 1959.

13. Uintah and Ouray Agency, Resolution no. 59–8, 7 Jan. 1959, (X 80) PMN Papers.

14. *Affiliated Ute Citizens v. United States*, 406 US 128 (1972), Appendix 506, (AUC 972) PMN Papers.

15. AUCU, Minutes, 7 Mar. 1959.

16. Ibid., 9 Mar. 1959.

17. *Ute Termination Act, U.S. Code*, vol. 25, sec. 677n (1994).

18. AUCU, Minutes, 7 Apr. 1959.

19. Richard Hackford, Deposition, 16, 26; Darrell Fleming, Letter to Frederick M. Haverland, 10 Aug. 1960, 3, (X 107) PMN Papers.

20. AUCU, Minutes, 8 Dec. 1958.

21. *Code of Federal Regulations*, vol. 25, secs. 243.5, 243.6, 243.12, (X 132) PMN Papers.

22. AUCU, Notice of a Special Membership Meeting, 4 Oct. 1958, (AUC 75) PMN Papers.

23. AUCU, Minutes, 8 Dec. 1958. Each stock certificate bore the following legend:

> NOTICE OF RESTRICTION ON TRANSFER
>
> Transfer of this certificate at any time prior to August 27, 1964, to a person not a member of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, as defined in Public Law 671—83rd Congress, approved August 27, 1954, 68 Stat. 868, shall be invalid unless the certificate of the Superintendent of the Uintah and Ouray Reservation is endorsed thereon showing that a prior and proper offer has been made to members of said tribe in accordance with law and the regulations of the Secretary of the Interior.

See stock certificates in (AUC 982) and *Affiliated Ute Citizens v. United States*, Appendix-Exhibits 106, (AUC 973) PMN Papers.

24. AUCU, Minutes, 12 Jan. 1959.

25. Ibid., 7 Apr. 1959.

26. Ibid., 13 Apr. 1959.

27. Ibid., 23 Jan. 1959.

28. AUCU, Minutes of General Membership Meeting, 1 Nov. 1958, 4–5, (X 429) PMN Papers; AUCU, Minutes, 8 Dec. 1958.

29. AUCU, Minutes, 23 Jan. 1959.

30. Ibid.

31. Ibid., 24 Feb. 1959.

32. Ibid.; AUCU, Minutes, 23 Jan. 1959.

33. Ibid., 13 Apr. 1959.

34. Richard Hackford, Deposition, 13, 16, 25–26, 76–77.

35. BIA, "Private Treaty" sales, etc., n.d., (X 101) PMN Papers.

36. See note 6, chap. 7.

37. John S. Boyden, Sr., Deposition, 4 Oct. 1977, in *Hackford v. First Security Bank*, 20, (AUC 1007) PMN Papers. Boyden said, "The tribe began to get interested when Workman indicated that since he was a mixed-blood he could get the land."

38. F. M. Haverland, Letter to Commissioner [Rex Lee, Acting], 17 Aug. 1960, (X 104) PMN Papers.

39. Franklin C. Salisbury [Acting Assistant Solicitor, Indian Legal Activities] to Commissioner of Indian Affairs [Glenn L. Emmons], "Interpretation of word 'tribe' as used within the Act of August 27, 1954 (68 Stat. 868)," 30 Nov. 1956, (X 384 and AUC 973 p. 23) PMN Papers.

40. Department of Interior, "Remarks by Commissioner of Indian Affairs Louis R. Bruce at a Dinner Meeting of Western Oklahoma Indian Leaders, Oklahoma City, Okla.," 24 Oct. 1969, (AUC 236) PMN Papers. See also Bureau of Indian Affairs, "Federal Indian Policies from the Colonial Period through the Early 1970's," 10, (AUC 806) PMN Papers; the platforms of both major political parties in 1960, calling for rejection of termination, are quoted at Association on American Indian Affairs, Inc., "An American Indian Point 4 Program," (AUC 934) PMN Papers.

41. Henry Cuch, Letter to Glenn L. Emmons, Commissioner of Indian Affairs, 31 Mar. 1960, (X 328) PMN Papers.

42. See notes 44 and 46 and accompanying text.

43. Homer S. Jenkins, Chief, Branch of Tribal Programs, memorandum to file: "Status of Transactions relating to the division of Assets between the Indians of the Uintah and Ouray Reservation," 24 July 1959, BIA Records, no. 44, (AUC 976 and X 442) PMN Papers.

44. AUCU, Minutes, 12 Aug. 1959.

45. Ibid.

46. Cornelius, memorandum to files, 26 Aug. 1959, 1, 4–5, BIA Records, no. 66, (AUC 976) PMN Papers.

47. Ibid. Cornelius's memo states that "the field staff then asked about the regulations relative to section 15, P L. 671," that "agreement on the regulations had finally been reached" but "the Solicitor's office found they were not satisfied with the regulations as proposed." The memo then states, "Mr. Boyden suggested that it may be well for him to take this up with Mr. Hyden personally" and "a later report from Mr. Boyden

indicated that agreement was reached on the incorporation of several items." The only change that had been made when the regulations were finally published was the elimination of the private treaty and requirement of an offer to the tribe. "Regulations relative to section 15, P.L. 671" relates to "member of the tribe" and a "later report from Mr. Boyden indicat[ing] that agreement was reached on the regulations which involved the incorporation of several items" refers to changes in the regulations so that "member of the tribe" meant "the Ute Indian Tribe."

48. George W. Hedden, Area Director, Letter to Commissioner [Emmons], 16 Dec. 1959, (X 109) PMN Papers.

49. *Code of Federal Regulations*, vol. 25, secs. 243.6, 243.7.

50. Ibid., sec. 243.7.

51. Meriam Report, 40-41.

52. Hedden, Letter to Commissioner [Emmons].

53. On October 12, 1959, the board contacted George C. Morris of Salt Lake City and requested that he meet with them. John Boyden then "came in and said he is calling Phoenix on per-capita and wants to know if he should ask about the mixed-bloods partial division. He was told yes." Workman then said, "We cannot hire George Morris with tribal funds unless you get a contract and have [it] signed by the Secretary of Interior. Decided to pass the hat for money to pay him." AUCU, Minutes, 12 Oct. 1959.

54. AUCU, Minutes, 6 Oct. 1959, 2.

55. [Ute Indian Tribe, Fort Duchesne, Utah], "Special Joint Business Committee and AUCU Meeting," 23 Oct. 1957, 9, (B 29) PMN Papers.

56. Chief, Branch of Tribal Programs, memorandum to file, "Status of transactions relating to division of assets between the Indians of the Uintah and Ouray Reservation," 24 July 1959, (X 442) PMN Papers.

57. AUCU, Minutes, 12 Jan. 1959, 2.

58. Ibid., 9 Mar. 1959.

59. Carl J. Cornelius, memorandum to H. B. Jenkins, 21 Apr. 1960, BIA Records, no. 56, (AUC 976) PMN Papers.

60. See John S. Boyden, Letter to Harry L. Stevens, 5 Apr. 1960; C. J. Cornelius, Letter to H. B. Jenkins, 21 Apr. 1960; F. M. Haverland, Letter to Commissioner, 12 Apr. 1960; R. O. Curry, Letter to John O. Crow, 1 Apr. 1960; Henry T. Cuch, Letter to Glenn L. Emmons, 31 Mar. 1960, BIA Records, nos. 55, 56, 57, 58, 59, (AUC 976) PMN Papers. Rex Lee, Acting Commissioner, Letter to Frederick M. Haverland, Area Director, 12 Aug. 1960, (AUC 980 Ex. 40) PMN Papers, states, "After giving careful consideration to your suggestion that the regulations as proposed be changed to allow mixed-blood members to dispose of such interests in tribal property to other members by negotiation, including gift transactions, it was determined that the Act does not contemplate such dispositions."

61. AUCU, Minutes, 12 Oct. 1959, 1–2. The AUCU board "and other interested members" met with George C. Morris at 1:00 P.M. on October 14, 1959, but minutes apparently were not kept. AUCU, Minutes, 14 Oct. 1959. See also objections to Boyden in Booker T. W. Mountain and 3 others, Telegram to Commissioner, 17 Jan. 1960; Chief J. Twohy, Telegram to BIA, 11 Jan. 1960, BIA Records, no. 1, (AUC 976) PMN Papers.

62. AUCU, Minutes, 3 Aug. 1960.

63. The minutes during late 1959 and throughout 1960 demonstrate ambivalence and confusion on the matter of legal representation. An offer of George C. Morris "to work" was transmitted to the range corporations and the Ute Distribution Corporation. AUCU, Minutes, 30 Nov. 1959, 2. On January 12, 1960, the three corporations were "asked to have their lawyer present if they have one" and "Joseph A. Workman was asked to place a long distance call to Mr. Boyden to ask him if he could consider coming out for this meeting [on February 13, 1960] and if he would possibly take the job of legal counsel for the Mixed-blood group for 6 months. Joe placed the call and Mr. Boyden stated that he would be here." AUCU, Minutes, 12 Jan. 1960, 3. Boyden discussed "work that needs to be done on corporations, etc., but he has no authority" and said he would "take a short term proposition on this." AUCU, Minutes, 8 Feb. 1960. On February 19, 1960, it was resolved "to write George C. Morris and ask him to return all material that was given to him." AUCU, Minutes, 19 Feb. 1960. Boyden presented and the AUCU board adopted a resolution hiring him as counsel on March 8, 1960. AUCU, Minutes, 8 Mar. 1960. On May 9, 1960, Boyden reported that "his contract [has not been] approved yet." AUCU, Minutes, 9 May 1960. On June 27, AUCU resolved to write a letter to Secretary of Interior Seaton, Commissioner Emmons, Area Director Haverland, Superintendent Zollar, Boyden, and Glen McMurdock, president of the Ute Distribution Corporation, stating we "do not think it is feasible to pay George Morris along with Boyden as they are doing the same work," AUCU, Minutes, 27 June 1960, and that the letter "was under [Boyden's] supervision." AUCU, Minutes, 28 June 1960. On August 3, 1960, "discussion was held on hiring of George Morris as legal counsel for Ute Distribution Corporation. . . . Mac [Murdock] then asked the question as to whether or not they could let this Board pay George Morris to go and do that work for them. Mr. Haverland said that he had no objection whatsoever of them hiring Mr. Morris or any other legal counsel, however they had no funds with which to pay him and if he wanted to work for them for nothing that was fine or they could pay him out of their own pockets." AUCU, Minutes, 3 Aug. 1960, 2. On August 8, 1960, "Boyden says he would like to leave this work with everyone feeling good about this whole thing. Lorena [Iorg, a director of the Ute Distribution Corporation] is awful mad at Mr. Boyden. . . . Boyden says if you would like his contract to be terminated, he will see that it is, if you want it there so you can use him, he does not want to run out on you," but Boyden's contract was approved 4-0. AUCU, Minutes, 8 Aug. 1960. Finally, Boyden agreed to

"complete the few things that have to be done . . . without any further compensation" and the board "[gave] Mr. Boyden permission to go ahead." AUCU, Minutes, 29 Aug. 1960.

64. AUCU, Minutes, 30 Nov. 1959.

65. Colin Murdock, Letter to Secretary of Interior, 18 Aug. 1960, 4, 5, 10, BIA Records, no. 51, (AUC 976) PMN Papers.

66. AUCU, Minutes, 6 Oct. 1960. See also Marguerite Murray Hendricks, Letter to Glenn L. Emmons, 26 Mar. 1960, BIA Records, no. 59, (AUC 976) PMN Papers.

67. Uintah and Ouray Agency, Memorandum, "Item 1 on Agenda for U & 0 Visit to Washington, January, 1960," 3, 28 Dec. 1959, BIA Records, no. 2, (AUC 976 and X 408) PMN Papers.

68. BIA, *Federal Indian Policies*, 11–12. See also, Oran F. Curry, Letter to Secretary of Interior [Stewart L. Udall], 30 July 1961, BIA Records, no. 4, (AUC 976) PMN Papers; Native Civil Rights Project, *A Covenant and a Promise*, 18, (AUC 969) PMN Papers.

69. AUCU, Minutes, 22 June 1960; *U.S. Statutes at Large* 72 (1958): 290–91; *U.S. Statutes at Large* 72 (1958): 816–19; *U.S. Statutes at Large* 74 (1960): 867–68.

70. AUCU, Minutes, 19 Jan. 1960.

71. AUCU, Minutes, 22 June 1960, 3.

72. Preston V. Allen, Telegram to Fred A. Seaton, 19 Jan. 1960, BIA Records, no. 60, (AUC 976 and X 445) PMN Papers. Years later, Raymond Carufel stated, "While Mr. Crow was there everything went smoothly, but after that it appeared to me that all the superintendents were interested in was to finish the whole thing in a hurry, and for the life of me I couldn't understand the rush as we had two more years to go yet before the deadline that was set under the law." Raymond Carufel, Letter to Preston Allen, 10 Apr. 1968, (AUC 529) PMN Papers.

## CHAPTER 7

1. Arthur V. Watkins, Letter to Reginald O. Curry, 12 May 1953, (X 396) PMN Papers.

2. Association on American Indian Affairs, Inc., "An American Indian Point 4 Program," [1956], (AUC 934) PMN Papers. See also "This Way Lies Freedom—A Statement of Basic Policy of the Association on American Indian Affairs," *Indian Affairs*, no. 15, n.s. (March 1956): 1–2, (AUC 903) PMN Papers. Oliver LaFarge, author of *Laughing Boy* (1929), a classic novel that viewed American Indians sympathetically, became an Indian advocate and spokesman for Indian rights.

3. AAIA, "An American Indian Point 4 Program."

4. AUCU, Minutes, 1 Feb. 1960, (X 75) PMN Papers.

5. Ibid., 8 Feb. 1960.

6. Calvin Hackford stated that Boyden saw too many assets going into the hands of mixed-bloods and that the mixed-bloods were taking "his ball game." Calvin Hackford, Interview by Parker M. Nielson, 29 Oct. 1979, audiocassette, 545–587/660, (AUC 755) PMN Papers. See Henry Cuch, Letter to Glenn L. Emmons, Commissioner of Indian Affairs, 31 Mar. 1960, (X 328) PMN Papers, complaining that "operations of the full-bloods [were crippled] due to lack of balanced range conditions." Bill Reed was of the opinion that Boyden was motivated to break up the Uintahs, to control the Indians for the benefit of the Mormons and whites, because the mixed-blood Uintahs were dominant in the tribe and there was too much opposition from them. William C. Reed, Interview by Parker M. Nielson, 1 Sept. 1973, audiocassette, tape no. 1, side A, 380–389/444, side B, 310, 367/444, (AUC 755) PMN Papers. See also Jon Stewart and Peter Wiley, "Cultural Genocide."

7. AUCU, Minutes, 12 Oct. 1959, 8 Feb. 1960.

8. Ibid., 19 Feb. 1960.

9. Employment Contract of John Boyden with Affiliated Ute Citizens, 14 July 1959 and 13 Feb. 1960, (X 390) PMN Papers.

10. AUCU, Minutes, 8 Mar. 1960.

11. Ibid.

12. Ibid.

13. Ibid., 19 Feb. 1960.

14. Ibid.

15. Ibid.

16. Ibid., 8 Mar. 1960.

17. Ibid., 11 Apr. 1960.

18. Ibid., 21 Apr. 1960.

19. Cf. Herman J. Viola, *Diplomats in Buckskins: A History of Indian Delegations in Washington City*, 127, 187, for practices with aboriginal Utes.

20. AUCU, Minutes, 8 Mar. and 11 Apr. 1960; John S. Boyden, Letter to Harry L. Stevens, 5 Apr. 1960, (X 323) PMN Papers.

21. Joseph A. Workman, Letter to Carl Cornelius, 8 June 1960, (X 383) PMN Papers.

22. Franklin C. Salisbury [Acting Assistant Solicitor, Indian Legal Activities], Letter to Commissioner of Indian Affairs [Glenn L. Emmons], "Interpretation of word 'tribe' as used within the Act of August 27, 1954 (68 Stat. 868)," 30 Nov. 1956, *Affiliated Ute Citizens v. United States*, 406 US 128 (1972), Appendix-Exhibits 23, (X 384 and AUC 973 p. 23) PMN Papers.

23. John S. Boyden, conversation with Parker Nielson, Salt Lake City, Utah, in 1968.

24. Glenn Emmons, Letter to Joseph A. Workman, 27 June 1960, (X 382) PMN Papers; Joseph A. Workman, Letter to Carl Cornelius, 8 June 1960, BIA Records, no. 53, (AUC 976) PMN Papers.

25. Glenn Emmons, Letter to Henry J. Cuch, 15 June 1960, (X 330) PMN Papers.

26. F. M. Haverland, Letter to BIA Commissioner, 17 Aug. 1960, 2, (X 104) PMN Papers.

27. John S. Boyden, Papers, Special Collections, Marriott Library, University of Utah, Salt Lake City, Utah, no. 823, Day Planner, 22 June 1960.

28. Glen McMurdock and Lorena Iorg, Letter to Fred A. Seaton, 27 July 1960, BIA Records, no. 13, (AUC 976) PMN Papers; M. M. Zollar, Letter to Fred A. Seaton, 10 Aug. 1960, BIA Records, no. 14, (AUC 976) PMN Papers.

29. AUCU, Minutes, 22 June 1960.

30. Indian Law Resource Center, "Report [to President Carter] to the Hopi Kikmongwis and other Traditional Hopi Leaders on Docket 196 and the Continuing Threat to Hopi Land and Sovereignty," March 1979, (AUC 835) PMN Papers.

31. AUCU, Minutes, 22 June 1960.

32. Ibid., 28 June 1960.

33. Ibid., 18 July 1960.

34. Lewis Carroll, *Through the Looking Glass*, 213.

35. AUCU, Minutes, 12 July 1960.

36. Elmer Hackford, Deposition, 7 Apr. 1977, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 24, (AUC 1026) PMN Papers.

37. Board of Directors, Affiliated Ute Citizens of Utah, Letter to Members, 25 Jan. 1960, and attached Invitation to Bid forms, (AUC 76) PMN Papers; AUCU, Minutes, 7 Jan. 1959.

38. Calvin Hackford, Deposition, 3 May 1977, in *Hackford v. First Security Bank*, 32–34, (AUC 1025) PMN Papers.

39. Preston V. Allen, Deposition, 22 Apr. 1977, in *Hackford v. First Security Bank*, 66–67, (AUC 1001) PMN Papers.

40. Ibid., 25.

41. Ibid., 19–29; Calvin Hackford, Interview, 29 Oct. 1979, audiocassette, 385/660; Glen Mac Murdock, Jr., Testimony, 30 Nov. 1979, in *Hackford v. First Security Bank*, 940–42, (AUC 1086) PMN Papers.

42. F. M. Haverland, Letter to Commissioner, 12 Aug. 1960 (X 133) PMN Papers; F. M. Haverland, Letter to Commissioner, 26 Apr. 1960, BIA Records, no. 55, (AUC 976) PMN Papers.

43. John Boyden, Letter to Rex Lee, 16 Aug. 1960, BIA Records, no. 50, (AUC 976 and 360A) PMN Records.

44. Roger Ernst, Letter to Area Director, 24 Aug. 1960, (X 108A) PMN Papers; Glenn L. Emmons, Letter to Frederick M. Haverland, 30 Sept. 1960, BIA Records, no. 47, (AUC 976) PMN Papers; Leon V. Langan, Telegram to John S. Boyden, 1 Sept. 1960, BIA Records, no. 49, (AUC 976) PMN Papers.

45. Emmons, Letter to Workman, emphasis added.

46. Calvin Hackford, Deposition, 23–24; Calvin Hackford, Interview, 660/660.

47. Margaret Sprouse, Letter to Reginald O. Curry, 11 Aug. 1960, (X 122) PMN Papers; Margaret Sprouse (form letter), 19 Aug. 1960, (X 136) PMN Papers.

48. [BIA], "Mixed-Blood Sellers of Range Companies Shares, September 10, 1960," (X 140) PMN Papers.

49. Darrell Fleming, Letter to F. M. Haverland, 10 Aug. 1960, 3, (X 107) PMN Papers.

50. AUCU, Minutes, 7 Mar. 1959.

51. Ouray McCook, Letter to M. M. Zollar, 18 Oct. 1960, (X 187) PMN Papers.

52. Ibid.

53. Employment Contract of John Boyden with Affiliated Ute Citizens; John S. Boyden, Letter to David R. Warner, 29 July 1969, John S. Boyden, Papers, Special Collections, Marriott Library, University of Utah, Salt Lake City, Utah, no. 823, copy in (AUC 961) PMN Papers. Boyden continued to act as attorney for Preston Allen, Elmer Hackford, and numerous mixed-blood Uintahs in litigation concerning the Ute Distribution Corporation, for fees solicited from them, from July 19, 1963, through March 17, 1966. John S. Boyden, letters to Preston Allen and Elmer Hackford, 19 July 1963, 30 Dec. 1964, 17 Mar. 1966, (AUC 898) PMN Papers.

54. F. M. Haverland, Letter to Commissioner, 25 Oct. 1960, (X 188) PMN Papers.

## CHAPTER 8

1. David Rich Lewis, *Neither Wolf Nor Dog: American Indians, Environment, and Agrarian Change*, 32, 63. The BIA banned the Sun Dance in 1913, but Indian police refused to enforce the ban and the Utes cloaked it in agrarian imagery as a "Harvest" or "Thanksgiving" dance. Ibid.

2. The Sun Dance scene is based on my observations of the Sun Dance at Whiterocks in 1968. I attended at the invitation of mixed-blood Uintah participants. See also Karl Young, "Sun Dance at Whiterocks," 233; Robert Harry Lowie, "Sun Dance of the Shoshoni, Ute and Hidatsa," pt. 5.

3. The meeting and dialogue are drawn from depositions and personal interviews that I conducted over a period of years and, although the words quoted are accurate, are otherwise fictional.

4. Compare AUCU, Minutes, 22 June 1960, (X 75) PMN Papers.

5. AUCU, Minutes, 25 Jan. 1960.

6. F. M. Haverland, Letter to M. M. Zollar, 16 Aug. 1960, (X 127) PMN Papers.

7. F. M. Haverland, Letter to Private Treaty Purchasers, 16 Aug. 1960, (X 126) PMN Papers.

8. Joseph A. Workman, Letter to Stewart L. Udall, 18 Mar. 1961, (X 234A) PMN Papers.

9. John O. Crow, Letter to Joseph A. Workman, 18 May 1961, (X 234) PMN Papers.

10. Richard N. Hackford, Deposition, 19 Apr. 1977, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 40, (AUC 1028) PMN Papers.

11. Elmer Hackford, Deposition, 17 Apr. 1977, in *Hackford v. First Security Bank*, 65, (AUC 1026) PMN Papers.

12. Calvin C. Hackford, Deposition, 3 May 1977, in *Hackford v. First Security Bank*, 33, (AUC 1025) PMN Papers.

13. AUCU, Minutes, 22 June 1960.

14. Wanda Hackford, Interview by Parker M. Nielson, 23 Oct. 1980, audiocassette, side B, 045/260, (AUC 755) PMN Papers.

15. Calvin Hackford, Deposition, 38.

16. Ibid., 33–34.

17. AUCU, Minutes, 22 June 1960.

18. Calvin Hackford, Deposition, 29, 34–41; Calvin Hackford, Interview by Parker M. Nielson, 29 Oct. 1979, audiocassette, side A, 455–517/660, (AUC 755) PMN Papers.

19. Calvin Hackford, Deposition, 41.

20. Complaint, *Margaret Sprouse v. Martin M. Zollar*, Docket No. 144-60 (USDC Utah, filed 31 Oct. 1960), (X 193) PMN Papers.

21. Calvin Hackford, Deposition, 41; Uintah and Ouray Agency, "Resolution no. 60-238," 10 Oct. 1960, (X 173) PMN Papers.

22. Calvin Hackford, Deposition, 30.

23. Marrion L. Harrison, Memorandum to R. O. Curry, 22 Dec. 1960, (X 193B) PMN Papers; Uintah and Ouray Agency, "Resolution no. 60-309," 14 Dec. 1960, (X 193) PMN Papers.

24. Paraphrasing Chief Moty Tiger, as quoted in Angie DeBoe, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes*, 172.

## CHAPTER 9

1. Glenn L. Emmons, Letter to Henry T. Cuch, 27 Sept. 1960, (X 154) PMN Papers.

2. F. M. Haverland, Letter to Commissioner, 2 Sept. 1960, (X 153) PMN Papers.

3. Affiliated Ute Indian Trust Agreement, 28 July 1960, (X 98) PMN Papers.

4. Glenn L. Emmons, Letter to George S. Eccles, 22 Dec. 1955, (X 354 and B 12) PMN Papers; Glenn L. Emmons, Letter to George S. Eccles, 4 Jan. 1956, (X 355) PMN Papers; George S. Eccles, Letter to John Crow, 20 Feb. 1956, (X 458) PMN Papers; George S. Eccles, Letter to Glenn L. Emmons, 16 Jan. 1956, (X 459) PMN Papers.

5. Max Thomas, Letter to Ralph Cowan, 16 Nov. 1958, (X 307) PMN Papers; Affiliated Ute Citizens of the State of Utah (AUCU), Minutes, 1 Nov. 1958, (X 429) PMN Papers.

6. First Security Bank of Utah, N.A., Receipt for Rock Creek Cattle Range Company stock, Sept. 1960, (X 90) PMN Papers; First Security Bank of Utah, N.A., Receipt for Antelope Sheep Range Company stock, Sept. 1960, (X 91) PMN Papers; Ralph Cowan, Letter to M. M. Zollar, 19 Oct. 1960, (X 185) PMN Papers.

7. Ralph Cowan, Letter to A. H. Harris, 16 Jan. 1958, (X 85) PMN Papers.

8. Affiliated Ute Trust Agreement, Art. II.

9. C. Tabb George, Deposition, 2 Feb. 1979, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 21, (AUC 1024) PMN Papers.

10. Ibid., 73.

11. G. S. Bigler, Letter to James S. Jardine, 20 Nov. 1979, (B 493) PMN Papers.

12. C. Tabb George, Telephone conversation with Parker M. Nielson, 28 Dec. 1978, audiocassette, (AUC 755) PMN Papers.

13. F. M. Haverland, Letter to Commissioner, 16 Aug. 1960, (X 362) PMN Papers.

14. F. M. Haverland, Letter to John S. Boyden, 16 Aug. 1960, (X 356A) PMN Papers.

15. Rex Lee, Letter to Assistant Secretary, Public Land Management, 12 Jan. 1961, BIA Records, no. 8, (AUC 976 and X 414) PMN Papers; Henry Cuch, Letter to Glenn L. Emmons, Commissioner of Indian Affairs, 31 Mar. 1960, (X 328) PMN Papers. Carl J. Cornelius, Letter to Homer B. Jenkins, 30 Dec. 1960, BIA Records, no. 9, (AUC 976) PMN Papers, states that "the letter [was] prepared by Mr. Boyden on December 7, following a meeting with Assistant Secretary Abbott, Messrs. Lee, Boyden, Curry and Cuch." The area director stated that Boyden had been working on such a letter "weeks" earlier. F. M. Haverland, Letter to Commissioner [Emmons], 12 Apr. 1960, (X 327) PMN Papers. Boyden and Rex Curry furnished information concerning the Margaret Sprouse suit for use in the letter in December 1960 and January 1961. John S. Boyden, Letter to Carl J. Cornelius, 3 Jan. 1961, (X 373) PMN Papers; John S. Boyden, Letter to Carl J. Cornelius, 16 Dec. 1960, R. O. Curry, Letter to Commissioner, 19 Dec. 1960, BIA Records, no. 10, (AUC 976) PMN Papers.

16. R. O. Curry, Letter to M. M. Zollar, 14 Dec. 1961, (X 235) PMN Papers.

17. John S. Boyden, Deposition, 4 Oct. 1977, in *Hackford v. First Security Bank*, 23, 45–46 (AUC 1007) PMN Papers.

18. Meriam Report, 40–41.

19. M. M. Zollar, Letter to Glen McMurdock, 20 Oct. 1960, (X 92) PMN Papers; M. M. Zollar, Letter to Richard Hackford, 20 Oct. 1960, (X 93) PMN Papers.

20. Ralph D. Cowan, Secretary, "Minutes of Special Meeting of Trust Investment Committee [of First Security Bank]," 13 Sept. 1960, (X 158) PMN Papers.

21. Boyden, Deposition, 22–23.

22. Ibid., 23–25.

23. Ibid., 24; Cowan, "Minutes of Trust Committee."

24. Boyden, Deposition, 27; Cowan, "Minutes of Trust Committee."

25. Ibid.

26. AUCU, Minutes, 6 Sept. 1956; Preston V. Allen, Testimony, 27 Nov. 1979, in *Hackford v. First Security Bank*, 284–85, (AUC 1084) PMN Papers. See Charles F. Moore, Appraisal Report, 4 Sept. 1958, (X 25) PMN Papers. A. H. Harris, Memoranda, 14 Nov. 1958, 24 Sept. 1958, and 22 Oct. 1958, attached to the Report, ibid., indicates that Harris "adjusted" the appraisal report according to "carrying capacities" or AUMs established by Moore.

27. Ralph D. Cowan, Secretary, "Excerpt from Minutes of Trust Investment Committee of First Security Bank of Utah, 15 Sept. 1960," (X 159) PMN Papers.

28. George, Deposition, 148.

29. Ibid., 63–64.

30. Ibid., 70–72, 144.

31. Ibid., 134–43.

32. Ezilda Hendricks, Testimony, 28 Nov. 1979, in *Hackford v. First Security Bank*, 126–27, (AUC 1085) PMN Papers.

33. Cowan, "Minutes of Trust Committee," 22 Sept. 1960.

34. Extension Division, University of Utah, "Final Report of the Bureau of Indian Services," July 1961, 10, 12, (X 413) PMN Papers.

35. Cowan, "Minutes of Trust Committee," 22 Sept. 1960.

36. AUCU, Minutes of General Membership Meeting, 1 Nov. 1958, 4.

37. C. Tabb George, Letter to Earl Dillman, 10 Oct. 1961, (X 246) PMN Papers; C. Tabb George, Letter to Connie Mack Denver, 28 Sept. 1961, (X 254) PMN Papers.

38. Calvin Hackford, Interview by Parker M. Nielson, 29 Oct. 1979, audiocassette, 517/660, (AUC 755) PMN Papers.

39. Calvin C. Hackford, Deposition, 3 May 1977, in *Hackford v. First Security Bank*, 41, 44, (AUC 1025) PMN Papers; Leon V. Langan, Letter to Frederick M. Haverland, 18 Sept. 1960, BIA Records, no. 48, (AUC 976) PMN Papers.

40. Calvin Hackford, Interview: Hackford, Testimony, 1 Dec. 1979, in *Hackford v. First Security Bank*, 1082, (AUC 1086) PMN Papers; Allen, Testimony, 325.

41. Calvin Hackford, Deposition, 42–45, 49.

42. James E. Officer, Letter to Glen McMurdock, 7 Feb. 1963, BIA Records, no. 3 (AUC 976) PMN Papers; Stewart L. Udall, "Termination of Federal Supervision Over the Affairs of the Individual Mixed-Blood Members [of the Ute Indian Tribe]," *Federal Register* 26, no. 165 (26 Aug. 1961): 8042, copy in (B 331) PMN Papers.

43. Ralph D. Cowan, Letter to Parents of Beneficiaries, 26 Apr. 1963, (X 260) PMN Papers.

44. Ralph D. Cowan, Letter to M. M. Zollar, 5 Aug. 1963, in (AUC 981) PMN Papers, states "this [Elizabeth B. Poowegup] is the first request we have received for a transfer of the stock" and "we could make no transfer of the stock until your certificate . . . has been stamped on the stock certificate."

45. John S. Boyden, Letter to First Security Bank, 22 July 1959, (X 314) PMN Papers.

46. Ralph Cowan, Testimony, in *Affiliated Ute Citizens v. United States*, 406 US 128 (1972) at Appendix 286-91, (AUC 972) PMN Papers.

47. Ibid., 286; Ralph D. Cowan, Letter to Lena Sixkiller, 23 Sept. 1963, Appendix-Exhibits 29, (AUC 973) PMN Papers. M. L. Schwartz, Superintendent, Letter to W. Wade Head, Area Director, 23 Oct. 1964, in (AUC 981) PMN Papers, states that "rather than actually affix the certificate of this office to the stock certificate as required, an expedient arrangement was made with them [First Security Bank] to furnish a separate certification." Deviation from the transfer procedure permitting an affidavit of the selling shareholder and a separate stock power, rather than the certificate of the Superintendent, pursuant to a request by the purchaser, that the required amount had been paid in cash, stamped on the certificate, is at Ralph Cowan, Letter to M. M. Zollar, 19 Oct. 1960, copy in *Affiliated Ute Citizens v. United States*, Appendix-Exhibits 32. At Ibid., Appendix 286–88, Cowan testified in response to a question, "You found that a little bit awkward because of the fact you were holding the stock certificates in your vault": "We had to work out a procedure, yes, that would still take care of it."

48. Melvin Reed, Deposition, 10 Aug. 1967, in *Reyos v. First Security Bank*, 431 F2d 1337 (10th Cir 1970), *reversed sub. nom.*, *Affiliated Ute Citizens v. United States*, 406 US 128 (1972), 48, 49 (AUC 1066) PMN Papers.

49. *Affiliated Ute Citizens v. United States*, Appendix, 112–128.

50. Reed, Deposition, 49.

51. Ibid., 38.

52. Ibid., 6–7.

53. Ibid., 26.

54. Ibid., 17, 21.

55. *Affiliated Ute Citizens v. United States*, Appendix 138.

56. Rex Lee, Letter to Assistant Secretary, Public Land Management, 12 Jan. 1961, BIA Records, no. 8, (AUC 976 and X 414) PMN Papers.

57. Darrell Fleming, Letter to F. M. Haverland, 16 Jan. 1959, (X 102) PMN Papers. Cf. F. M. Haverland, Letter to M. M. Zollar, 1 Nov. 1960, (X 127) PMN Papers.

58. *Affiliated Ute Citizens v. United States*, Appendix, 138.

59. Reed, Deposition, 22.

60. Ibid., 18.

61. Ibid., 58.

62. *Affiliated Ute Citizens v. United States*, Appendix, 41, 478.

63. Ibid., 43.

64. Ibid., 480–81.

65. Ibid., 450; *Affiliated Ute Citizens v. United States*, Appendix-Exhibits, 94.

## CHAPTER 10

1. John S. Boyden, Letter to First Security Bank, 22 July 1959, (X 314) PMN Papers.

2. Ute Distribution Corporation, Specimen Stock Certificate, in *Affiliated Ute Citizens v. United States*, 406 US 128 (1972), Appendix-Exhibits 106, (AUC 973 and 982) PMN Papers.

3. John S. Boyden, Letter to First Security Bank, 22 July 1959, in ibid., Appendix-Exhibits 19.

4. Ralph D. Cowan, Testimony, in ibid., Appendix, 281, (AUC 972) PMN Papers.

5. Richard Hackford and Edith O. Gardner, Letter to Ralph Cowan, 2 Feb. 1961, (X 348) PMN Papers: "You had assured us that these certificates would not be delivered to the record owners of the same until we had instructed you to do so. We were instructed to inform you of this action and emphasize your promise to us that the certificates would not be delivered to anyone until a request by you had been submitted to the Board of Directors of our Company and the issuance thereof approved."

6. Complaint, *Margaret Sprouse v. Martin M. Zollar*, Docket no. 144-60 (USDC Utah, filed 31 Oct. 1960), (X 193) PMN Papers.

7. George W. Abbott, Assistant Secretary of Interior, Letter to Martin M. Zollar, 19 Jan. 1961, 3, (X 206) PMN Papers. A temporary restraining order against Superintendent Zollar rejecting the Margaret Sprouse offer to purchase was issued, which expired by its own terms. Permanent restraint was never ordered.

8. Willis W. Ritter, statement to Ralph Cowan, 11 Nov. 1960, in *Sprouse v. Zollar*, 14–16, BIA Records, no. 45, (AUC 976 and X 205) PMN Papers.

9. Boyden continued to act as the lawyer for Preston Allen, Elmer Hackford, and other mixed-blood Uintahs and was paid fees for his services until March 17, 1966. John S. Boyden, Letter to Preston Allen and Elmer Hackford, 17 Mar. 1966, and attached list of "Donations for Legal Services," (AUC 898) PMN Papers. There is no indication that he ever disclosed his conflicting role or asked for or received consent of the mixed-bloods.

10. Hugh W. Colton, Letter to Sen. Frank E. Moss (D.-Utah), 20 Mar. 1961, (X 128) PMN Papers.

11. Moss, Letter to Udall, 22 Mar. 1961, (X 368B) PMN Papers; Moss, Letter to Udall, 23 Mar. 1961, (X 368C) PMN Papers.

12. R. O. Curry, Letter to M. M. Zollar, 14 Dec. 1961, (X 235) PMN Papers.

13. George W. Hedden, Letter to M. M. Zollar, 7 Feb. 1962, (X 238) PMN Papers.

14. C. Tabb George, Letter to Earl Dillman, 10 Oct. 1961, (X 246) PMN Papers; C. Tabb George, Letter to Connie Mack Denver, 28 Sept. 1961, (X 254) PMN Papers; Ralph D. Cowan, Secretary, Excerpt from Minutes of Meeting of Trust Investment Committee, 22 Sept. 1960, (X 165) PMN Papers.

15. C. Tabb George, Letter to Claude Taylor, 4 Apr. 1961, (X 244) PMN Papers.

16. Lena Sixkiller (on her own behalf and for Connie Denver), Letter to First Security Bank, n.d., (X 243-1) PMN Papers; George, Letter to Claude Taylor.

17. C. Tabb George, Letter to Alvin Richard Denver, 5 Oct. 1960, (X 161-9) PMN Papers; Ralph Cowan, Letter to M. M. Zollar, 19 June 1961, (X 229) PMN Papers.

18. C. Tabb George, Letter to John S. Boyden, 27 Mar. 1961, (X 232) PMN Papers; M. M. Zollar, Letter to C. Tabb George, 30 Mar. 1961, (X 233) PMN Papers; C. Tabb George, Letter to M. M. Zollar, 4 Apr. 1961, (X 233A) PMN Papers.

19. Merrill Millett, Letter to C. Tabb George, 8 May 1961, (X 242-1) PMN Papers.

20. C. Tabb George, Letter to Merrill Millett, 25 Apr. 1962, (X 248) PMN Papers; Ralph Cowan, Letter to Paul Murphy, 3 May 1963, (X 262-3) PMN Papers.

21. Ralph Cowan, Letter to Raymond Valladolid, 19 Sept. 1960, (X 339A) PMN Papers; Ralph Cowan, Letter to Albert H. Harris, 19 Sept. 1960, (X 339B) PMN Papers; Tabb George, Letter to Lenwood Sireech, 21 Sept. 1960, (X 339C) PMN Papers; C. Tabb George, Deposition, 21 Feb. 1979, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 103, (AUC 1024) PMN Papers.

22. Ralph D. Cowan, Letter to Parents of Beneficiaries of Affiliated Ute Indian Trust, 26 Apr. 1963, (X 260) PMN Papers.

23. John O. Crow, Letter to Frank E. Moss, 20 June 1961, (X 368D) PMN Papers.

24. Ralph Cowan, Testimony, 284.

25. Ralph D. Cowan, Memorandum, "Sale of Antelope Sheep Range Company and Rock Creek Cattle Range Company," 3 Feb. 1961, (X 227) PMN Papers; A. H. Nebeker, Letter to Ralph Cowan, 28 Mar. 1961, (X 228) PMN Papers; George, Letter to Alvin Richard Denver.

26. Ritter, Statement to Cowan, 16–17.

27. "Ute Tribal Funds, $5 Million, Transferred to Local Bank," *Uintah Basin Standard* (Roosevelt), 29 Feb. 1968, 1, (AUC 994) PMN Papers, reports deposit of $5,325,000 with First Security Bank, Roosevelt, "the largest deposit ever placed at the bank."

28. See Lorena Iorg, Letter to Connie Mack Denver, ca. 1962, (X 389) PMN Papers.

29. Ibid.

30. Preston V. Allen, Deposition, 22 Apr. 1977, in *Hackford v. First Security Bank*, 72, (AUC 1001) PMN Papers.

31. Lorena Iorg, Testimony, in *Hackford v. First Security Bank*, 970–71, 990, (AUC 1086) PMN Papers.

32. Lorena Iorg, Testimony, 969, 972, 984–85.

33. Ibid., 969, 984.

34. Uintah and Ouray Agency, Special Meeting, 1 Feb. 1962, (X 269) PMN Papers.

35. *Ute Termination Act, U.S. Code*, vol. 25, sec. 677i (1994).

36. *Code of Federal Regulations*, vol. 25, sec. 178; United States Department of Interior, Bureau of Indian Affairs, Raymond Jackson, Chairman, *Hearings on Proposed Addition of New Part 178 to Subchapter P, Chapter I, Title 25, Code of Federal Regulations*, 6 Feb. 1976 (Salt Lake City, Barbara G. Anderson, Reporter), (AUC 988) PMN Papers; BIA, Notice of Rule Making, "Joint Management of the Assets of the Ute Indian Tribe Not Susceptible to Equitable and Practicable Distribution Under the Ute Partition Act," 6 Dec. 1976, (AUC 997) PMN Papers.

37. Ute Indian Tribe, Resolution 63–57, 28 Feb. 1963, (X 271) PMN Papers.

38. C. Tabb George, Letter to Willis Smith, attorney for Connie Mack Denver, 8 Dec. 1961, (X 256) PMN Papers.

39. George, Letter to Millett, 25 Apr. 1962.

40. Ibid.

41. Willis Smith, Letter to C. Tabb George, 6 Mar. 1962, (X 257) PMN Papers.

42. C. Tabb George, Letter to Merrill Millett, 17 May 1962, (X 250) PMN Papers: "In response to your questions about Mr. Hackford wanting to repurchase stocks [*sic*] certificates in the name of his children, Mr. Cowan wishes it stated that the Trust Department at present is making no repurchases of stock."

43. Ibid.

44. Ibid.

45. Cowan, Letter to Parents of Beneficiaries.

46. Lena D. Sixkiller, Letter to Ralph Cowan, 1 May 1963, (X 261-6) PMN Papers. See also Gwendolyn Mojado, Letter to Trust Department, First Security Bank, 7 May 1963, (X 261-3) PMN Papers.

47. Gwendolyn M. Mojado, Letter to Trust Department.

48. Merrill Millett, Letter to C. Tabb George, 14 May 1962, (X 249) PMN Papers.

49. Richard N. Hackford, Letter to C. Tabb George, 7 June 1963, (X 251) PMN Papers.

50. Richard N. Hackford, Letter to C. Tabb George, 6 July 1963, (X 251) PMN Papers.

51. Ralph Cowan, Letter to John C. Beaslin, 3 Feb. 1966, (X 253) PMN Papers.

52. George, Letter to Millett, 17 May 1962.

53. Uintah and Ouray Agency, Minutes of Special Meeting, 28 Feb. 1963, (X 270) PMN Papers; Uintah and Ouray Agency, Resolution No. 63-57.

54. Rex Lee, Letter to Assistant Secretary, Public Land Management, 12 Jan. 1961, BIA Records, no. 8 (AUC 976 and X 414) PMN Papers.

55. Connie Mack Denver, Jr., Letter to First Security Bank, 18 Sept. 1964, (X 258) PMN Papers.

56. Affiliated Ute Indian Trust Agreement, 26 July 1960, (X 98) PMN Papers.

57. Leon F. Olsen, Trust Administrator, Letter to Connie Mack Denver, Jr., 18 Sept. 1964, (X 259) PMN Papers.

58. John S. Boyden, Deposition, 4 Oct. 1977, in *Hackford v. First Security Bank*, 21-22, (AUC 1007) PMN Papers.

59. Harvey Natches, Letter to Stockholders of Rock Creek Cattle Range Company and Antelope Sheep Range Company, 25 June 1964, (X 272) PMN Papers.

60. Petition, In the Matter of the Voluntary Dissolution of the Rock Creek Cattle Co., Civil No. 4027 (D Court, Duchesne County, Utah), 15 Mar. 1965, (X 273) PMN Papers; Petition, In the Matter of the Voluntary Dissolution of the Antelope Sheep Range Company, Civil No. 4028 (D Court, Duchesne County, Utah), 18 Nov. 1965, (X 274) PMN Papers.

61. Ibid.; Petition, In the Matter of Rock Creek Cattle Range Co.

62. Ibid.

63. Stipulation, in the Matter of the Voluntary Dissolution of the Rock Creek Cattle Company, Civil No. 4027, and Antelope Sheep Range Company, Civil No. 4028 (D Court, Duchesne County, Utah), 12 Sept. 1966, (X 282) PMN Papers.

64. Minute Entry, Civil Nos. 4027–28 (D Court, Duchesne County, Utah), "Voluntary Dissolution of Two Corporations," 10 Oct. 1966, (X 283 C) PMN Papers.

65. Superintendent, Letter to Thomas C. Cuthbert, First Security Bank, 6 Sept. 1977, (AUC 996) PMN Papers.

66. *Affiliated Ute Citizens v. United States*, Appendix 502–3; L. W. Schramm and J. D. Lankford, *Oil Shale*, in U.S. Bureau of Mines, Bulletin 680, 1965 ed., Mineral Facts and Problems, copy in (AUC 980 p.77) PMN Papers; F. W. Christiansen, "Summary of Oil Shale Data Testimony," 18 Oct. 1967, (AUC 981) PMN Papers.

67. *Affiliated Ute Citizens v. United States*, Appendix, 328.

68. *Affiliated Ute Citizens v. United States*, 406 US 128, 146 (1972).

69. "Nixon's Indian Policy," *Indian Affairs*, no. 72, n.s. (September–November 1968): 3, (AUC 86) PMN Papers.

70. "Hickel Pledges New Servies to Indians," *Salt Lake Tribune*, 9 Oct. 1969, A 17, (AUC 145) PMN Papers.

71. Howard R. Graves, "Sen. Kennedy Assails U.S. Indian Policies," *Washington Post*, 8 Oct. 1969, (AUC 146) PMN Papers.

## CONCLUSION

1. George W. Abbott, Assistant Secretary of Interior, Letter to Martin M. Zollar, 19 Jan. 1961, (X 206) PMN Papers.

2. Wanda (Mrs. Elmer) Hackford, Interview by Parker M. Nielson, 23 Oct. 1980, audiocassette, side B, 045–001/260, (AUC 755) PMN Papers; Preston Allen, Testimony, 26 Nov. 1979, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 237, (AUC 1084) PMN Papers.

3. Quoted in Vine Deloria, Jr., "Indians Blame Utahn for Many Injustices," *Salt Lake Tribune*, 9 Dec. 1969, 2.

4. Meriam Report, 22.

5. Carolyn Grattan-Aiello, "Senator Arthur V. Watkins and the Termination of Utah's Southern Paiute Indians," 281, quotes Watkins's letter of 13 Apr. 1954 to the First Presidency of the Mormon church, "I realize the Gospel of Jesus Christ will be the motivating factor [in the transformation of the Indians]."

6. Frederick Webb Hodge, ed., *Handbook of American Indians North of Mexico*, 2:293; "Indians Are Killed or Kill Themselves," *Akwesasne Notes*, 1 no. 9 (October 1969): 33, (AUC 951) PMN Papers.

7. Fray Angelico Chavez, trans., and Ted J. Warner, ed., *The Dominguez-Escalante Journal*, 56.

8. Bancroft, *History of Utah*, 313; Howard A. Christy, "Open Hand and Mailed Fist: Mormon-Indian Relations in Utah, 1847–52," 222; Church of Jesus Christ of Latter-Day Saints, Journal History, June 2, 1849, as quoted in Paul Bailey, *Walkara: Hawk of the Mountains*, 70.

9. Commissioner of Indian Affairs, *1873 Annual Report*, 43d Cong., 1st sess., H. Ex. Docs. v. 4, pt. 1, no. 1, pt. 5, 453–54.

10. Chavez and Warner, *The Dominguez-Escalante Journal*, 34, 54–55, 118.

11. Preston Allen, Elmer Hackford, and Calvin Hackford, Interview by Parker M. Nielson, 29 June 1980, audiocassette, tape no. 3, side B, 140 and 855/890, (AUC 755) PMN Papers. Preston Allen stated that "not a soul of us had the education to know" and that they relied on Boyden. See also R. Warren Metcalf, "Lambs of Sacrifice: Termina-

tion, the Mixed-Bloods, and the Problem of Identity," 329: "none of the elected board members had the slightest experience in creating a comprehensive, long-range termination program, and they naturally looked to Rex Curry and the Tribal Business Committee for direction." Ibid., 336: "the partitioning of the tribe would be controlled by the full-bloods and the mixed-bloods would have input in the process, nothing more."

12. *Hearings on S. 2813*, 668–69, 678.

13. *Organization of the Indian Territory*, 41st Cong., 2d sess., Rept. No. 336, 6, 10, 11. Cf. Spencer W. Kimball, Council of the Twelve, L.D.S. Church, in Will Fehr, "Watkins Vows Continued Congress Effort to Gain Still More Freedoms for Indians," *Deseret News and Telegram* (Salt Lake City), 2 Nov. 1954, quoted at 282n22.

14. Meriam Report, 7.

15. Ibid., 41.

16. Book of Mormon, 2 Nephi 30:3–7. In the 1981 edition, church leaders changed this phrase to "pure and delightsome." See also, Juanita Brooks, *John Doyle Lee*, 180–82; Elder LeGrand Richards, statement on KBYU-TV, 28 Feb. 1970, quoted in "Mormons Go Home," *Daily Chronicle* (student newspaper of University of Utah), 16 Apr. 1970, (AUC 896) PMN Papers. See also Jon Stewart and Peter Wiley, "Cultural Genocide."

17. Doctrine and Covenants 28:8; Book of Mormon, Ether 13:1–9; Helaman 15:12–13.

18. Brooks, *John Doyle Lee*, 159, 163–64, 172, 177, 238; Howard Stansbury, *Exploration and Survey of the Valley of the Great Salt Lake of Utah*, 149. The practice of placing Indian children in non-Indian foster homes was criticized at Meriam Report, 15; Bureau of Indian Affairs, *Federal Indian Policies from the Colonial Period through the Early 1970's*, 5, 7, 10, (AUC 806) PMN Papers. See also, Roland McCook, "Dream-keepers," (Ogden) *Standard-Examiner*, 12 Jan. 1996, (AUC 989) PMN Papers; Stewart and Wiley, "Cultural Genocide."

19. "Watkins Rebuffs Article, Defends Role on Senate Panel," *Salt Lake Tribune*, 9 Dec. 1969, 2.

20. Julius Murray, the Uintahs' representative on the Tribal Business Committee, objected to the planning boards on grounds that there should not be two planning groups. Allen, Hackford, and Hackford, Interview, tape no. 3, side B, 230/880.

21. Matt. 6:24, Luke 16:13. John S. Boyden, Letters to Preston Allen and Elmer Hackford, 19 July 1963, 30 Dec. 1964, 17 Mar. 1966, (AUC 898) PMN Papers.

22. Red Cloud, as quoted in Dee Brown, *Bury My Heart at Wounded Knee*, 449.

23. Compare Angie DeBoe, *And Still the Waters Run*, xvi.

24. Preston Allen's range stock was sold to the tribe in 1965 and his Ute Distribution Corporation stock taken in satisfaction of a loan in 1969. Preston V. Allen, Testimony, 27 Nov. 1979, in *Hackford v. First Security Bank*, 235–37, 322–23; Final

Report of the Special Master in *Miera v. First Security Bank of Utah*, 776 F2d 902 (10th Cir 1985), 5, (AUC 1088) PMN Papers.

25. James Marlow and George Zielke, "Just What Is an Indian?", (AUC 92) PMN Papers. See also Senate Bill no. 3797, 83d Cong., 2d sess., proposing to define an "Indian" according to "blood," and "Federal Indian Legislation and Policies," working paper, Workshop on American Indian Affairs, University of Chicago Department of Anthropology, Colorado Springs, 1956, 28–30, (AUC 48) PMN Papers, commenting, "According to Felix Cohen (author of *Handbook of Federal Indian Law*) . . . we are dealing primarily not with a particular race as such, but with members of certain social and political groups towards which the Federal government has assumed responsibilities. In the eyes of anthropologists and sociologists, it is not the degree of blood which determines what an individual is and what his needs are, but rather it is the culture he comes from."

26. Sen. Edward M. Kennedy (D.-Mass.), "Excerpts from Address before the National Congress of American Indians," 7 Oct. 1969, 2, (AUC 149) PMN Papers.

27. U.S. Department of Interior, "Indians at Work," 4; Hodge, *Handbook*, 2:510.

28. Curt Burnett, "Indian Suicide Rate Rises," *Deseret News*, (Salt Lake City), 13 Aug. 1969, A16, (AUC 96) PMN Papers; "Indians Are Killed or Kill Themselves," *Akwesasne Notes*, Oct. 1969.

29. It was but a short time before a new set of legislators and administrators, in the political upheaval of 1994, made the mistake of believing they could change the American Indians' way of life by denying them funds for the management of their common resources.

30. Extension Division, University of Utah, "Final Report of the Bureau of Indian Services," 11, (X 413) PMN Papers.

31. Wanda (Mrs. Elmer) Hackford, Interview by Parker M. Nielson, 23 Oct. 1980, audiocassette, side B, 030/260, (AUC 755) PMN Papers, stated that Liz Bumgarner's automobile accident was caused by drinking.

32. Colin Murdock, Letter to Secretary of Interior, 18 Aug. 1960, 3, (X 443) PMN Papers.

## EPILOGUE

1. Stephen G. Boyden, Brief in Support of Agreed Fee [to BIA], 9 Aug. 1972, 6–9, in John S. Boyden, Papers, Special Collections, Marriott Library, University of Utah, Salt Lake City, Utah, Acct. no. 823, box 51 FDI, lists pertinent highlights of the career of John S. Boyden.

2. John S. Boyden, Sr., Deposition, 4 Oct. 1977, in *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), 3, (AUC 1007) PMN Papers.

3. Ibid., 29.

4. The Utes' lack of facility in dealing with property is explained at William C. Reed, Interview by Parker M. Nielson, 1 Sept. 1973, audiocassette, tape no. 2, side A, 400–452/390, side B, 275–300/390; Wanda (Mrs. Elmer) Hackford, Interview by Parker M. Nielson, 23 Oct. 1980, audiocassette, side A, 195–210/260, (AUC 755) PMN Papers.

5. I gratefully acknowledge that at this point in the saga of the Affiliated Utes, and extending through the trial before the Honorable A. Sherman Christensen, U.S. district judge for the District of Utah, and appeal before the court of appeals for the Tenth Circuit, I had the able assistance of Adam M. Duncan, attorney at law in Salt Lake City, who was actually the inspiration for many of the legal theories pursued in the *Reyos* case.

6. *Affiliated Ute Citizens v. United States*, Appendix 235–39.

7. Ibid., 123–24.

8. Ibid., 190, 195–96.

9. Ibid., 214–17.

10. Rex Curry, Letter to Superintendent M. M. Zollar, 5 Nov. 1963, in *Affiliated Ute Citizens v. United States*, Appendix-Exhibits, 55, (AUC 973) PMN Papers.

11. Adalyn H. Logan, Letter to M. L. Schwartz, 23 Apr. 1965, quoted in *Affiliated Ute Citizens v. United States*, Appendix 211, Appendix-Exhibits 47.

12. Ibid., Appendix 275.

13. Ibid., 281, 284.

14. Ibid., 284; Glen McMurdock, Letter to Ralph D. Cowan, 7 Mar. 1964, in *Affiliated Ute Citizens v. United States*, Appendix-Exhibits, 34.

15. Ibid., *Affiliated Ute Citizens v. United States*, Appendix 285.

16. Ibid., 286.

17. Ibid., 287.

18. Ibid., 290–91.

19. John S. Boyden, Papers, Marriott Library, University of Utah, Salt Lake City, Utah, Acct. no. 823, box 21, 1968 correspondence, (AUC 962) PMN Papers.

20. Adam M. Duncan and Parker M. Nielson, Letter to Superintendent, 9 May 1968, (AUC 965) PMN Papers. Cf. President Richard M. Nixon, To the Congress of the United States, News Release [asking Congress to pass a new Concurrent Resolution repealing the termination policy], 8 July 1970, (AUC 998) PMN Papers.

21. Plaintiffs' Response to Amicus Brief, 7 June 1968, 4–9, in *Reyos v. First Security Bank*, 431 F2d 1337 (10th Cir 1970), (AUC 1000) PMN Papers.

22. Transcript of hearing dated 20 May 1968, 10–11, in Reyos v. First Security Bank, 431 F2d 1337 (10th Cir 1970).

23. *Preston Allen, Elmer L. Hackford, Wanda Russell Hackford, and Juanita W. Allen v. The Ute Distribution Corporation*, et al., Civil No. 4597 (Third District Court,

Uintah County, Utah, 1966), (AUC 899 and 932) PMN Papers. John S. Boyden, Letters to Preston Allen and Elmer Hackford, 19 July 1963, 30 Dec. 1964, 17 Mar. 1966, (AUC 898) PMN Papers.

24. *Allen v. Merrell* (Duchesne County Clerk), 305 P2d 490 (Utah 1956), (AUC 24 and 650) PMN Papers.

25. Preston Allen, Letter to John S. Boyden, 11 June 1968, (AUC 966) PMN Papers.

26. Boyden, Letter to Preston Allen, 2 July 1968, Boyden Papers, box 21, 1968 correspondence. Emphasis mine.

27. Ibid. The private admonition by Judge Christensen in chambers was not recorded, but Christensen delivered its substance, on the record, in *Affiliated Ute Citizens v. United States*, Appendix 561–63:

> THE COURT: . . . And counsel on all sides have my high respect; and I must say, so that we can get the thing at rest, Mr. Boyden, that I didn't think the problem was something that could be brushed aside, if it were implicit in any matter before me, because if there were a contract not to accept representation by the Tribe, if their claims were in conflict with the [Affiliated] Ute Indian claims, then unless I misunderstand things, it would probably be a matter that would bother you some too.
>
> . . . . .
>
> THE COURT: . . . Now, there has been cited this contractual provision in the retainer agreement, I think it was, that in the event there was a conflict between the claims of the tribe and the claims of the [Affiliated] Utes, you would represent neither with regard to that particular litigation.
>
> Now, it may be that no matter how unmerited the claims might be, so long as they weren't patently frivolous, the contract would still apply, because we never know in testing claims whether they're meritorious or not until the parties are heard. And if that can't be determined until someone who has no right to be heard is heard, it presents quite a dilemma.
>
> . . . . .
>
> MR. JOHN BOYDEN: I have represented the Ute Indian Tribe for better than 20 years. When we came to this parting of the ways, when the mixed-bloods voluntarily decided they would like to withdraw and take their share of the reservation, they had me do certain things. . . . And so I took a limited contract in which I agreed to do it. Now, all of

my work has to be approved by the Secretary of Interior before the statement of payment of fees. And, exactly what I did, I took this and said, "I have to have consent of both."

I got the consent of the Ute Tribe and the Affiliated Utes that while I was doing this work—this contract ended three years—that if there was anything of conflict of interest, I would represent neither.

THE COURT: Of course, the contract, as I read it, Mr. Boyden, wasn't limited to the period of the contract, because the—

. . . . .

MR. JOHN BOYDEN: . . . It was never intended that I would ever desert the Ute Indian Tribe.

THE COURT: No. But the contract said you would represent neither.

MR. JOHN BOYDEN: That's right.

. . . . .

But not perpetually. This contract terminated in three years.

THE COURT: For instance, on a conflict of interest, I'm just thinking out loud to try and clear the air, because I know that all of you want to do what is right—information or relationships can be established at one particular time, and parties might feel reluctant, even though the contract is for a particular time, and make full disclosures to counsel and have counsel participate in actions for that period of time, if they thought that the same counsel to whom they would make those disclosures would be in a position antagonistic to them.

So it's simply an interpretation of this contract. . . . And you'll decide that, and I'm sure it will be a proper decision.

28. John S. Boyden, Letter to David R. Warner, 29 July 1969, John S. Boyden Papers, Acct. no. 823, box 22, 1969 correspondence, Marriott Library, University of Utah, Salt Lake City, Utah, (AUC 961) PMN Papers.

29. Ibid.

30. Ibid., 3–4. Emphasis in original.

31. Ibid., 4–5. Emphasis in original.

32. Ibid., 5.

33. Ibid.

34. Ibid.

35. Henry Cuch, Letter to Glenn L. Emmons, Commissioner of Indian Affairs, 31 Mar. 1960, (X 328) PMN Papers. Carl J. Cornelius, Letter to Homer B. Jenkins, 30 Dec.

1960, BIA Records, no. 9, (AUC 976) PMN Papers, states that "the letter [was] prepared by Mr. Boyden on December 7, following a meeting with Assistant Secretary Abbott, Messrs. Lee, Boyden, Curry and Cuch." The area director stated that Boyden had been working on such a letter "weeks" earlier. F. M. Haverland, Letter to Commissioner [Emmons], 12 Apr. 1960, (X 327) PMN Papers. Boyden and Rex Curry furnished information concerning the Margaret Sprouse suit for use in the letter in December 1960 and January 1961. John S. Boyden, Letter to Carl J. Cornelius, 3 Jan. 1961, (X 373) PMN Papers; John S. Boyden, Letter to Carl J. Cornelius, 16 Dec. 1960, R. O. Curry, Letter to Commissioner, 19 Dec. 1960, BIA Records, no. 10, (AUC 976) PMN Papers.

36. John S. Boyden, Sr., Deposition, 22.

37. Ibid., 23.

38. See note 35, above; Boyden, Letter to Warner.

39. President Richard M. Nixon, News Release, 8 July 1970.

40. *Affiliated Ute Citizens v. United States*, Appendix 370.

41. Parker M. Nielson, Letter to Boyden, Tibbals & Staten, 29 June 1971, and Parker M. Nielson, Letter to E. Robert Seaver, Clerk, Supreme Court of the United States, 28 July 1971, (AUC 991) PMN Papers.

42. *Affiliated Ute Citizens v. United States*, Brief of Ute Indian Tribe of the Uintah and Ouray Reservation and Ute Distribution Corporation, a Utah corporation, as Amici Curiae, 2, 12, (AUC 990) PMN Papers.

43. I acknowledge the assistance of Washington, D. C., attorneys Wallace L. Duncan and Jon T. Brown in relation to the Supreme Court proceedings, although they did not appear at oral arguments or on the briefs.

44. *SEC v. Capital Gains Research Bureau, Inc.*, 375 US 180, 194 (1963).

45. *Code of Federal Regulations*, vol. 17, sec. 240.10b-5.

46. *Winters v. United States*, 207 US 564 (1908).

47. *Affiliated Ute Citizens v. United States*, 199 Ct Cl 1004 (1972), copy in (AUC 1088) PMN Papers:

> All the facts and circumstances were known and in existence at the time of the termination proclamation. By that date [August 27, 1961], the mixed-bloods knew their relative share and, just as in the case of tangible property, could have sued individually or through the Affiliated Ute Citizens or UDC [Ute Distribution Corporation]. In this connection it makes no difference that the underlying assets may have remained in trust status. With respect to the proportion the mixed-bloods (and the various kinds of mixed-bloods) were to get, the unrestricted UDC shares now stand in the place of the underlying assets, and the relative proportions had been finally fixed. There was

no power left in the Federal Government to change those proportions, and therefore the claim as to these intangibles (which relates entirely to relative proportions) had fully ripened.

48. *U.S. Code*, vol. 28, sec. 2501 (1994).

49. *Affiliated Ute Citizens v. United States*, 215 Ct Cl 935, 431 F2d 1337 (1977), copy in (AUC 1089) PMN Papers.

50. Glenda Miera, Deposition, 20 Sept. 1973, in *Miera v. First Security Bank*, 776 F2d 902 (10th Cir 1985), 4, 43–56, 64, 67–71, 76–77, (AUC 1051) PMN Papers.

51. Memorandum Opinion and Order in *Miera v. First Security Bank*, C-126-73-J (D Utah 1989), 20–23, (AUC 1091) PMN Papers.

52. There were other efforts on behalf of the Affiliated Utes by other lawyers, some of which were successful. For example, Oranna Moosman went hunting on the reservation without a license and was arrested by the tribe. The case was dismissed on the theory that she still had hunting and fishing rights.

53. *Hackford v. First Security Bank*, 521 F Supp 541 (D Utah 1981), slip opinion, 21-22 and n 22, in (AUC 1092) PMN Papers.

54. Brief of Appellants in *Hackford v. First Security Bank*, No. 81-1863 (United States Court of Appeals for the Tenth Circuit), 20–21.

# SELECT BIBLIOGRAPHY

## CASES


Affiliated Ute Citizens v. United States, 406 US 128 (1972).

Affiliated Ute Citizens v. United States, 199 Ct Cl 1004 (1972). Copy in PMN Papers.

Affiliated Ute Citizens of the State of Utah v. United States, 215 Ct Cl 935, 431 F2d 1337 (1977). Copy in PMN Papers.

Allen v. Merrell (Duchesne County Clerk), 305 P2d 490 (Utah 1956).

Hackford v. First Security Bank, 521 F Supp 541 (1981).

Hagan v. Utah, 114 S Ct 958 (1994).

Lone Wolf v. Hitchcock, 187 US 553 (1903).

Miera v. First Security Bank of Utah, 776 F2d 902 (10th Cir 1985).

Reyos v. First Security Bank, 431 F2d 1337 (10th Cir 1970), *reversed sub. nom.*, Affiliated Ute Citizens v. United States, 406 US 128 (1972).

SEC v. Capital Gains Research Bureau, Inc., 375 US 180 (1963).

Ute Indian Tribe v. The State of Utah, 521 F Supp 1072 (D Utah 1981). Copy in PMN Papers.


## BOOKS, ARTICLES, AND MISCELLANEOUS SOURCES


Affiliated Ute Citizens of the State of Utah (AUCU). *See* Uintah and Ouray Agency.

*Appropriations Act of March 23, 1871, U.S. Code*, vol. 25, sec. 71 (1983).

Association on American Indian Affairs, Inc. "An American Indian Point 4 Program." New York: Association on American Indian Affairs, [1956]. Copy in PMN Papers.

———. "This Way Lies Freedom." *Indian Affairs*, no. 15, n.s. (March 1956): 1–2. Copy in PMN Papers.

"Back Pay for the Utes." *Time Magazine*, 24 July 1950, 19.

Bailey, Paul. *The Claws of the Hawk: The Incredible Life of Walker the Ute*. Los Angeles: Westernlore Press, 1966.

———. *Walkara: Hawk of the Mountains*. Los Angeles: Westernlore Press, 1954.

Bancroft, Hubert Howe. *History of Utah*. New York: History Company, 1964.

Barton, John D. "Fort Robidoux." In *Utah History Encyclopedia*, ed. Allan Kent Powell, 201. Salt Lake City: University of Utah Press, 1994.

Billington, Ray Allen. *Westward Expansion: A History of the American Frontier*. 3d ed. New York: Macmillan, 1967.

Boyden, John S. Collected Papers. Special Collections, Marriott Library, University of Utah, Salt Lake City.

Brooks, Juanita. *John Doyle Lee: Zealot, Pioneer Builder, Scapegoat*. Glendale, Calif.: Arthur H. Clark, 1961.

———. *Mormon Chronicle: The Diaries of John D. Lee, 1848–1876*. San Marino, Calif.: Huntington Library, 1955.

———. *The Mountain Meadows Massacre*. New ed. Norman: University of Oklahoma Press, 1962.

———. *On the Mormon Frontier: The Diary of Hosea Stout, 1810–1889*. Salt Lake City: University of Utah Press/Utah State Historical Society, 1964.

Brophy, William A., and Sophie D. Aberle. *The Indian: America's Unfinished Business*. Norman: University of Oklahoma Press, 1966.

Brown, Dee. *Bury My Heart at Wounded Knee: An Indian History of The American West*. New York: Holt, Rinehart & Winston, 1970.

Bureau of Indian Affairs. "Federal Indian Policies from the Colonial Period through the Early 1970's." Washington, D.C.: GPO, n.d. Copy in PMN Papers.

Burnett, Curt. "Indian Suicide Rate Rises." *Deseret News* (Salt Lake City), 13 August 1969. Copy in PMN Papers.

Burton, Doris K. "Vernal." In *Utah History Encyclopedia*, ed. Allan Kent Powell, 612. Salt Lake City: University of Utah Press, 1994.

Carver, John A. "Roles and Responsibilities: A Look at the Interior Department's Function in American Indian Affairs." *Indian Affairs*, no. 41, n.s. (May 1961): 7. Copy in PMN Papers.

Chavez, Fray Angelico, trans., and Ted J. Warner, ed. *The Dominguez-Escalante Journal: Their Expedition through Colorado, Utah, Arizona and New Mexico in 1776*. Provo: Brigham Young University Press, 1976.

Christy, Howard A. "Open Hand and Mailed Fist: Mormon-Indian Relations in Utah, 1847–52." *Utah Historical Quarterly* 46, no. 3 (Summer 1978): 216–35.

———. "The Walker War: Defense and Conciliation as Strategy." *Utah Historical Quarterly* 47 (Fall 1979): 395–420.

*Code of Federal Regulations*. Vol. 25, sec. 178.

———. Vol. 25, secs. 243.6, 243.7. Copy in PMN Papers.

Coleman, Ronald G. "The Buffalo Soldiers: Guardians of the Uintah Frontier 1886–1901." *Utah Historical Quarterly* 47 (Fall 1979): 421–39.

Conetah, Fred A. *A History of the Northern Ute People*. Edited by Kathryn L. McKay and Floyd A. O'Neil. Salt Lake City: University of Utah Printing Service for the Uintah-Ouray Ute Tribe, 1982.

Costo, Rupert. "The Indian New Deal: 1928–1945." In *Indian Self-Rule: Fifty Years under the Indian Reorganization Act*, 10–14. Sun Valley, Ida.: Institute of the American West. August 1983. Copy in PMN Papers.

Covington, James Warren. "Federal Relations with the Colorado Utes, 1861–1865." *Colorado Magazine* 28, no. 4 (October 1951): 257–66.

Curry, Rex. "Radio News, Station KJAM–Vernal, Utah." 23 July 1953. Copy in PMN Papers.

Dame, William H. "The American Indian: Why Isn't He Rioting?" *Deseret News* (Salt Lake City), 14 April 1969. Copy in PMN Papers.

Dawson, Thomas F. "Major Thompson, Chief Ouray and the Utes." *Colorado Magazine* 7, no. 3 (May 1930): 113–22.

DeBoe, Angie. *And Still the Waters Run: The Betrayal of the Five Civilized Tribes*. Princeton: Princeton University Press, 1940.

Deloria, Vine, Jr. *Custer Died for Your Sins: An Indian Manifesto*. Toronto: Macmillan, 1969.

———. "Indians Blame Utahn for Many Injustices." *Salt Lake Tribune*, 9 December 1969.

Dillman, Mildred Miles. *Early History of Duchesne County*. Springville, Utah: Art City Publishing, 1948. Copy in PMN Papers.

Extension Division, University of Utah. "Final Report of the Bureau of Indian Services." July 1961. Washington, D.C.: U.S. Department of Interior, Bureau of Indian Affairs. Photocopy. Copy in PMN Papers.

Fast, Howard. *The Last Frontier*. New York: Bantam Books, 1965.

*Federal Register*. Vol. 21, no. 66 (5 April 1956): 2208–12. Copy in PMN Papers.

———. Vol. 26, no. 165 (26 August 1961): 2208. Copy in PMN Papers.

Fehr, Will. "Watkins Vows Continued Congress Effort to Gain Still More Freedoms for Indians." *Deseret News and Telegram* (Salt Lake City), 2 November 1954. Copy in PMN Papers.

Garry, Joseph R. "What Is the Competency Bill—H.R. 4985." 4 May 1953. Mimeographed. Copy in PMN Papers.

Grant, Carter Eldredge. *The Kingdom of God Restored.* Salt Lake City: Deseret Book Company, 1955.

Grattan-Aiello, Carolyn. "Senator Arthur V. Watkins and the Termination of Utah's Southern Paiute Indians." *Utah Historical Quarterly* 63, no. 3 (Summer 1995): 268–83.

Graves, Howard R. "Sen. Kennedy Assails U.S. Indian Policies." *Washington Post*, 8 October 1969. Copy in PMN Papers.

H. Con. Res. 108. *U.S. Statutes at Large* 67 (1953): B 132. Copy in PMN Papers.

"Hickel Pledges New Services to Indians." *Salt Lake Tribune*, 9 October 1969. Copy in PMN Papers.

Hill, Joseph J. "Antoine Rubidoux: Kingpin of the Colorado River Fur Trade, 1824–1844." *Colorado Magazine* 7, no. 4 (July 1930): 131–32.

———. "Spanish and Mexican Exploration and Trade Northwest from New Mexico into the Great Basin, 1765–1853." *Utah Historical Quarterly* 3, no. 1 (January 1930): 3–23.

Hodge, Frederick Webb, ed. *Handbook of American Indians North of Mexico*, 2d ed. 2 vols. Washington, D.C.: GPO, 1912.

Huntington, Dimick B. "Meeting of the Snakes and Utahs." *Deseret News* (Salt Lake City), 19 September 1855. Copy in PMN Papers.

Indian Law Resource Center. Report to the Hopi Kikmongwis and Other Traditional Hopi Leaders on Docket 196 and the Continuing Threat to Hopi Land and Sovereignty. Washington, D.C.: Indian Law Resource Center. March 1979. Copy in PMN Papers.

*Indian Reorganization Act (Wheeler-Howard Act). U.S. Code.* Vol. 25, secs. 461–79 (1994).

"Indians Are Killed or Kill Themselves." *Akwesasne Notes* (Antioch-Putney Graduate School of Education, Putney, Vt.), 1 no. 9 (October 1969): 33. Copy in PMN Papers.

Institute of the American West. *Indian Self-Rule.* Sun Valley, August 1983. Salt Lake City: Radio Station KUER and The Institute of the American West. Sound recordings. Copy in PMN Papers.

———. *Indian Self-Rule: Fifty Years under the Indian Reorganization Act.* Sun Valley, Ida.: Institute of the American West, A Division of the Sun Valley Center for the Arts and Humanities. August 1983. Copy in PMN Papers.

Institute for Government Research (Brookings Institution). *The Problem of Indian Administration.* Washington, D.C.: GPO, 1928.

Janetski, Joel J. "The Ute of Utah Lake." University of Utah *Anthropological Papers*, no. 116. Salt Lake City: University of Utah Press, 1991.

———. "Utah Lake: Its Role in the Prehistory of Utah Valley." *Utah Historical Quarterly* 58 (Winter 1990): 5–31.

Jocknick, Sidney. *Early Days on the Western Slope of Colorado and Camp-Fire Chats with Otto Mears*. Denver: Carson-Harper, 1913.

Jorgenson, Joseph G. "Functions of Ute Folklore." Ph.D. dissertation, University of Utah, 1960.

———. *Sun Dance Religion: Power to the Powerless*. Chicago: University of Chicago Press, 1972.

Kappler, Charles J. *Indian Affairs, Laws and Treaties*. 2 vols. Washington, D.C.: GPO, 1904.

Keeler, W. W., Chairman, and Phileo Nash, James E. Officer, and William Zimmerman, Jr., Members. "Report to the Secretary of the Interior by the Task Force on Indian Affairs." Washington, D.C.: U. S. Department of Interior. 10 July 1961. Mimeographed. Copy in PMN Papers.

Kelley, Tina, and Kathryn L. MacKay. "Wakara." In *Utah History Encyclopedia*, ed. Allan Kent Powell, 615. Salt Lake City: University of Utah Press, 1994.

Kopper, Philip. *The Smithsonian Book of North American Indians Before the Coming of the Europeans*. Washington, D.C.: Smithsonian Books, 1986.

Lang, Gottfried O. "A Study in Culture Contrast and Culture Change: The Whiterock Utes in Transition." University of Utah *Anthropological Papers*, no. 15. Salt Lake City: University of Utah Press, February 1953.

Lewis, David Rich. *Neither Wolf Nor Dog: American Indians, Environment and Agrarian Change*. New York: Oxford University Press, 1994.

———. "Uintah-Ouray Indian Reservation." In *Utah History Encyclopedia*, ed. Allan Kent Powell, 572. Salt Lake City: University of Utah Press, 1994.

———. "Ute Indians—Northern." In *Utah History Encyclopedia*, ed. Allan Kent Powell, 608. Salt Lake City: University of Utah Press, 1994.

Lowie, Robert Harry. "Sun Dance of the Shoshoni, Ute and Hidatsa." American Museum of Natural History, *Anthropological Papers*, vol. 16. New York: The Trustees, 1919.

McCook, Roland. "Dreamkeepers." *Standard Examiner* (Ogden), 12 January 1996. Copy in PMN Papers.

McKinley, Francis. "Former Council Member Blasts Tribal Foes." *Vernal Express*, 27 April 1950. Copy in PMN Papers.

McLaughlin, James. *My Friend the Indian*. Baltimore: Proof Press, 1936.

McNickle, D'Arcy. "We Go On from Here." *Common Ground* 4 (Autumn 1943) :_____.

Malone, George W. "Abolish the Indian Bureau Now—Make the Indians People." U.S. Cong., Senate, *Congressional Record*. 82d Cong., 1st sess., Washington, D.C., 1951, 97, pt. 9: 11911–30. Copy in PMN Papers.

———. Speaking for S. 2167, 82d Cong., 1st sess., *Congressional Record.* Washington, D.C., 1951. 97, pt. 9: 11911–30. Copy in PMN Papers.

Manley, William Lewis. *Death Valley in '49: Important Chapter of California Pioneer History.* New York and Santa Barbara: Wallace J. Hebberd, 1929.

Manypenny, George W. *Our Indian Wards.* Cincinnati: Robert Clarke, 1880.

Mart, Fred. "Speech at Uintah Indian School," 26 January 1938. Records of the Ute Delegation, March 1945. Copy in PMN Papers.

Marlow, James, and George Zielke. "Just What Is an Indian?" AP Wire Service. Washington, D.C., ca. 1953. Copy in PMN Papers.

"Meeting of the Snakes and Utahs." *Deseret News* (Salt Lake City), 12 September 1855. Copy in PMN Papers.

Metcalf, R. Warren. "Lambs of Sacrifice: Termination, the Mixed-Blood Utes, and the Problem of Indian Identity." *Utah Historical Quarterly* 64 (Fall 1996): 322–43.

Mixed-Blood Group. "Plan for Distribution of the Assets of the Individual Mixed-blood Members of the Ute Indian Tribe, Uintah and Ouray Reservation, Utah." Copy in PMN Papers.

Mixed-Blood Planning Board. Minutes, 28 April 1955. Copy in PMN Papers.

Morgan, Dale. *The Great Salt Lake.* Indianapolis: Bobbs-Merrill, 1947.

National Archives. Washington National Records Center. "Negotiation of an Unratified Treaty of June 8, 1865, with the Ute Indians." Unratified Treaty Files. RG75. Copy in PMN Papers.

———. Records of Bureau of Indian Affairs. RG75. Copy in PMN Papers.

Native Civil Rights Project. *Covenant and a Promise: Treaty Rights of the Uintah Utes Revisited and Clarified.* Salt Lake City: Native Civil Rights Project, 1995. Copy in PMN Papers.

Nielson, Parker M. Collected Papers. Special Collections, Marriott Library, University of Utah, Salt Lake City.

"Nixon's Indian Policy." *Indian Affairs*, no. 72, n.s. (September–November 1968): 3. Copy in PMN Papers.

O'Neil, Floyd. "An Anguished Odyssey: The Flight of the Utes, 1906–1908." *Utah Historical Quarterly* 36, no. 4 (Fall 1968): 315–29.

———. "A History of the Ute Indians of Utah until 1890." Ph.D. dissertation, University of Utah, 1973.

———. "The Reluctant Suzerainty: The Uintah and Ouray Reservation." *Utah Historical Quarterly* 39, no. 2 (Spring 1971): 129–44.

———. "The Utes, Southern Paiutes, and Gosuites." In *The Peoples of Utah*, ed. Helen Z. Papanikolas. Salt Lake City: Utah State Historical Society, 1976.

O'Neil, Floyd A., and Stanford J. Layton. "Of Pride and Politics: Brigham Young as Indian Superintendent." *Utah Historical Quarterly* 46, no. 3 (Summer 1978): 236.

O'Neil, Floyd, and Kathryn L. MacKay. *A History of the Uintah-Ouray Ute Lands.* American West Occasional Papers, no. 10. Salt Lake City, University of Utah, 1977. Copy in PMN Papers.

Orfield, Gary. "Termination, Destruction and Restoration." In *Indian Self-Rule: Fifty Years under the Indian Reorganization Act.* Sun Valley, Ida.: Institute of the American West, August 1983.

Peterson, John A. "Black Hawk War." In *Utah History Encyclopedia*, ed. Allan Kent Powell, 43. Salt Lake City: University of Utah Press, 1994.

Powell, Allan Kent, ed. *Utah History Encyclopedia.* Salt Lake City: University of Utah Press, 1994.

Powell, John Wesley. "Life and Culture of the Ute." Smithsonian Institution, Anthropology Archives, Washington, D.C., 18–.

Reagan, Albert B., and Wallace Stark. "Chipeta, Queen of the Utes and Her Equally Illustrious Husband Noted Chief Ouray." *Utah Historical Quarterly* 6, no. 1 (January 1933): 103–10.

Rockwell, Wilson. *The Utes: A Forgotten People.* Denver: Sage Books, 1956.

Roosevelt, Eleanor. "To Arms, Indians! The Congressmen Are Coming!" *Washington Daily News*, 5 October 1949. Reprinted in *Congessional Record*, 81st Cong., 1st sess., 1949, 95, pt. 11: 14118. Copy in PMN Papers.

Sadler, Richard W. "Miles Goodyear" in *Utah History Encyclopedia*, ed. Allan Kent Powell, 227. Salt Lake City: University of Utah Press, 1994.

Sanchez, Paul R. "Ute Indian Social Progress, Part III." *Uintah Basin Standard* (Roosevelt, Utah), 23 December 1965. Copy in PMN Papers.

Sandoz, Mari. *Cheyenne Autumn.* New York: McGraw-Hill, 1953.

Stansbury, Howard. *Exploration and Survey of the Valley of the Great Salt Lake of Utah.* Washington, D.C.: Robert Armstrong, Public Printer, 1853.

"Statement Concerning the Uncompahgre Grazing Reserve, the Historic Background." 6 February 1943. Copy in PMN Papers.

Stewart, Jon, and Peter Wiley. "Cultural Genocide." *Penthouse*, June 1981, 81–164.

Stewart, Omer C. "Ute Indians: Before and after White Contact." *Utah Historical Quarterly* 34, no. 1 (Winter 1966): 38–61.

Terry, Wallace. "Success Isn't What You Have—It's What You've Given Away." *Standard Examiner* (Ogden), 2 June 1996, Parade Magazine 17. Copy in PMN Papers.

Tyler, S. Lyman. "Before Escalante: An Early History of the Yuta Indians and the Area North of New Mexico." Ph.D. dissertation, University of Utah, 1951.

———. *Federal Indian Policies: From the Colonial Period through the Early 1970's.* Washington, D.C.: GPO, n.d. Copy in PMN Papers.

———. "The Myth of the Lake Copala and Land of Teguayo." *Utah Historical Quarterly* 20, no. 4 (October 1952): 313–29.

———. "The Spaniard and the Ute." *Utah Historical Quarterly* 22, no. 4 (October 1954): 343–61.

Udall, Stewart L. Notice. "Ute Indian Tribe of the Uintah and Ouray Reservation, Utah." *Federal Register* 26, no. 165 (26 August 1961): 8042. Copy in PMN Papers.

Uintah and Ouray Agency, Fort Duchesne, Utah. "General Council Meeting," 29 May–1 June 1950. Copy in PMN Papers.

———. Minutes of Meetings of Affiliated Ute Citizens of the State of Utah (AUCU), 7 June 1956–26 August 1961. Copy in PMN Papers.

University of Chicago, Department of Anthropology. "Federal Indian Legislation and Policies." Workshop on American Indian Affairs, Colorado Springs, 1956. Copy in PMN Papers.

U.S. Department of the Interior, Bureau of Indian Affairs. Commissioner of Indian Affairs. *1861 Annual Report.* Washington, D.C.: GPO 1861.

———. *Annual Report (1881)* Washington, D.C.: GPO, 1881.

———. *1873 Annual Report.* Washington, D.C.: GPO, 1874.

———. "Indians at Work." Vol. 11 (November–December 1943).

———. "Part One: III. Ute Partition Act of 1954." Copy in PMN Papers.

———. "Stenographic Transcript of Hearings before the Committee on Interior and Insular Affairs, United States Senate, June 9, 1954 (S. 3532–H.R. 9398)." Copy in PMN Papers.

U.S. Congress, House. *Report with Respect to the House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs*, 83d Cong., 2d sess., 1954, H.R. Rep. no. 2680. Copy in PMN Papers.

U.S. Congress, Senate. Committee on Interior and Insular Affairs. Hearings on Tribal Funds of the Ute Indian Tribe, Utah, 81st Cong., 1st sess., 1949. Copy in PMN Papers.

———. *Hearings on S. 1357 and H.R. 3795.* 82d Cong., 1st sess., 1951. Copy in PMN Papers.

———. *Joint Hearings on S. 2813, H.R. 2828, and H.R. 7135, Before the Subcom. of the Com. on Interior and Insular Affairs*, 83d Cong., 2d sess. 668–69, 678 (10–12, March 1954). Copy in PMN Papers.

———. *Organization of the Indian Territory.* 41st Cong., 2d sess., Rept. no. 336.

*U.S. Statutes at Large* 1 (1787): 51.

———. 13 (1864): 63 as amended 20 (1878): 165.

———. 24 (1887): 388. *General Allotment Act.*

———. 25 (1888): 157.

———. 28 (1894): 337 Sec. 22.

———. 30 (1897): 62–87.

———. 30 (1898): 429.
———. 32 (1902): 245, 263–64. *Indian Appropriations Act of 1902.*
———. 32 (1902): 744. *Joint Resolution of June 19, 1902.*
———. 32 (1903): 982, 997–98. *Indian Appropriations Act of March 3, 1903.*
———. 43 (1924): 253. *Indian Citizenship Act.*
———. 62 (1948): 72.
———. 65 (1951): 193–96. *Act of August 21, 1951.*
Ute Indian Tribe. "Ute Ten Year Development Program." Fort Duchesne Agency, Fort Duchesne, Utah, ca. summer 1955. Copy in PMN Papers.
"Ute Indians Hit a $31.7 Million Jackpot." *Life Magazine*, 24 July 1950, 38–40.
*Ute Termination Act.* U.S. Code, vol. 25, sec. 677 (1994).
———. Sec. 677a (1994).
———. Sec. 677d (1994).
———. Sec. 677e (1994).
———. Sec. 677f (1994).
———. Sec. 677*l* (1994).
———. Sec. 677n (1994).
———. Sec. 677o (1994).
———. Sec. 677v (1994).
———. Sec. 677w (1994).
Van de Mark, Dorothy. "The Raid on the Reservations." *Harper's Magazine*, March 1956, 48–49. Copy in PMN Papers.
Vestal, Stanley. *Jim Bridger.* New York: Morrow, 1946.
———. *Warpath.* New York: Houghton Mifflin, 1934.
Viola, Herman J. *Diplomats in Buckskins: A History of Indian Delegations in Washington City.* Washington, D.C.: Smithsonian Institution Press, 1981.
"Watkins Rebuffs Article, Defends Role on Senate Panel." *Salt Lake Tribune*, 9 December 1969.
Weberman, Ben. "Letting George Do It." *Forbes*, 7 July 1980, 49.
Wesley, Clarence. "Wesley Explains Real Indian Issues." *Arizona Republic* (Phoenix), 9 December 1969. Reprinted in 102 Cong. Rec., 84th Cong., 2d sess., no. 106 A5037. Copy in PMN Papers.
Widsoe, John A. *Discourses of Brigham Young.* Salt Lake City: Deseret Book Company, 1951.
Workman, J. William, and Mildred Miles Dillman. "History of Fort Duchesne." Paper presented at Grade Four, Fort Duchesne School, Fort Duchesne, Utah, 1947. Mimeographed. Copy in PMN Papers.
Young, Karl E. "Sun Dance at Whiterocks." *Utah Historical Quarterly* 40, no. 2 (Summer 1972): 233–41.

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